



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

California Division

November 29, 2012

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Sacramento, CA 95814
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In Reply Refer To:
HDA-CA
File: #901

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

SUBJECT: FY 2013 Disadvantaged Business Enterprise (DBE) Goal Methodology Approval

Dear Mr. Dougherty:

In accordance with the provisions of 49 C.F.R. Part 26, the Federal Highway Administration has reviewed the California Department of Transportation's (Caltrans) revised FY 2013 DBE goal methodology submitted on November 20, 2012 that provided additional explanatory information to your goal originally submitted on September 14, 2012. For the federal-aid highway program in 2013, Caltrans submitted an overall goal of 12.5% (3.0% of which it projects to meet through race neutral means, and 9.5% through race conscious means). Our review considered the overall goal as well as the description of the data and methodology used in arriving at your overall goal, including the base figure calculation and evidence supporting the calculation; adjustments, if any, made to the base figure and the evidence supporting these adjustments; a summary of the relevant evidence in your jurisdiction; the projection of the portion of your overall goal that you will meet through race neutral as opposed to race conscious means and the basis for your projections; and the evidence of public participation in establishing your overall goal.

After reviewing this information, we have determined that the goal setting methodology you have employed is consistent with the requirements of 49 C.F.R. § 26.45 and that you have followed the requirements for public participation in establishing your overall goal as set forth in 49 C.F.R. § 26.45(g). Further, we have also approved your projection of the portions of your overall goal that you expect to meet through race neutral and race conscious means. That projection is subject to modification during the fiscal year in accordance with 49 C.F.R. § 26.51. The basis for our conclusions is set forth more fully in the attached document.

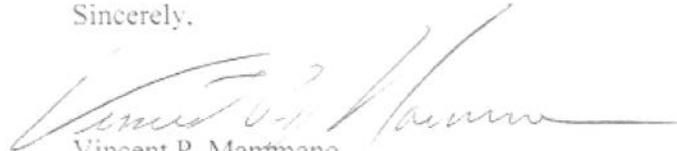
As you are aware, the Caltrans still must submit a separate overall DBE goal for the program funded by the Federal Transit Administration (FTA), based upon the goal setting approach outlined in Caltrans' DBE program. Caltrans should contact its regional FTA office for further guidance and assistance on these matters.

Caltrans has determined that there is no need to submit any changes to its DBE program that was approved by the Federal Highway Administration on April 3, 2000 as modified by amendments to your plan approved on January 21, 2004. Your DBE program, as previously approved by FHWA, contains all of the elements required by 49 CFR Part 26 and therefore continues to be in compliance with the requirements for the DBE program.

The remainder of Caltrans' program has not been changed, and contains all of the other elements required under 49 CFR 26. Caltrans' DBE program as revised continues to be in compliance with the requirements for the DBE program.

I would like to take this opportunity to thank you and your staff for your diligence and efforts in getting this program to the approval stage.

Sincerely,



Vincent P. Mantmano
Division Administrator

Enclosures

cc: Rene Halverson, Assistant Director, Caltrans Office of Business and Economic Opportunity
Ramon Carlos, Acting Caltrans DBE Program Manager

Explanation for Approval of California DBE Program Goal Setting Process for Fiscal Year 2013

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 2013.

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 woman-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;
- 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 elements 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 15,466 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 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, subprime loans, business loan denial rates, and business loan values), bonding, and insurance.

See the Study, Chapter 3 and Appendices E through 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 2008 – 2011 and the first half of FY 2012. 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

The 12.5 percent base figure includes minority- and women-owned firms that could potentially be certified as DBEs. BBC reports that about one-fifth (or 20%) of minority-and women-owned firms identified in the availability analysis were DBE-certified in 2012. Consequently, according to Caltrans, a downward adjustment could be considered on this basis. We disagree. The consideration of this factor as part of the step two analysis is 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.

• Public Participation Section 26.45(g)

The regulations require that Caltrans provide for public participation when establishing its overall goal. Caltrans consulted with its Statewide Small Business Council whose members represent over 30 contractor associations representing minority and women contracting firms in all major types of work done in the State’s Federal-aid Highway Program. It consulted with seven different non-DBE contractor associations and four different minority chambers of commerce.

The overall goal methodology was released or made available to the public on September 14, 2012. Also, starting on September 13, 2012, Caltrans published public notices requesting comments on its FY 2013 DBE goal in fifteen general circulation newspapers and three construction industry and six minority-focused publications. At the conclusion of its 45-day public comment period Caltrans received numerous comments, including that the statistical data in the disparity study does not by itself demonstrate that prejudice exists and the study's anecdotal information fails to provide justification for Caltrans' race- and sex-conscious measures.

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 anticipates that it can achieve 3.0% of its DBE participation through race and gender neutral means and 9.5% through race and gender conscious means. The race and gender neutral projection is based on the median race and gender neutral DBE participation it achieved during F.Y. 2007 through 2011 of 2.9%, which is rounded to 3.0%, with the balance, 9.5%, achieved through race and gender conscious means.

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:

- Host project-specific outreach events for small businesses.
- Provide technical assistance and training via supportive services contracts.
- Provide an "opt-in" feature to the Caltrans Web site to allow subcontractors or suppliers to be considered for bids without ordering a set of plans.
- Market the Small Business Administration's Surety Bond Guarantee Program statewide through Caltrans' District Small Business Liaisons and industry partnership agreements.

For additional race neutral measures see the Study, Chapter 9, Figure 9-4.

Conclusion

For the above reasons, the California Department of Transportation goal setting methodology and race-neutral/race-conscious projections for FY 2013 are approved.


Division Administrator

11/30/12
Date

Attachment: copy of goal methodology approved

Mr. Vincent Mammamo
November 20, 2012
Page 2

If you have any questions or need further assistance, please contact Ms. René Halverson, Assistant Director, Office of Business and Economic Opportunity at (916) 324-0990 or via e-mail at rene_halverson@dot.ca.gov.

Sincerely,



for

MALCOLM DOUGHERTY
Director

c: René Halverson, Assistant Director, Office of Business and Economic Opportunity,
California Department of Transportation

Enclosure

**CALIFORNIA DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
DISADVANTAGED BUSINESS ENTERPRISE
GOAL AND METHODOLOGY**

Federal Fiscal Year 2013-2015

Executive Summary

The California Department of Transportation (Caltrans) submits this Federal Fiscal Year (FFY) 2013-2015 goal and methodology to the Federal Highway Administration (FHWA) pursuant to 49 Code of Federal Regulations (CFR) sections 26.45, for federally-assisted highway contracts. For FFY 2013-2015, Caltrans will continue its Disadvantaged Business Enterprise (DBE) Program with a revised annual 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 the 12 public hearings held by Caltrans in May 2012; one hearing was held at each District located in Bishop, Eureka, Fresno, Irvine, Oakland, Los Angeles, Redding, Sacramento, San Bernardino, San Diego, San Luis Obispo, and Stockton, and 2 Stakeholders Discussion Groups in Sacramento and 2 Stakeholders Discussion Groups in Los Angeles held 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 and 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 contracts and Local Assistance federally-funded contracts and 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*.¹ 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.

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.

¹ Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, <http://osdbu.dot.gov/?TabId=133>.

FFY 2013 FHWA-Assisted Contracts

Caltrans will receive approximately \$3 billion in federal-aid highway program assistance during the next three FFYs, which is expected to be similar to the types of contracts studied in the Disparity Study by the types of work, sizes, and locations of contracts. These contracts include such things as roadway widening and rehabilitation, 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 FFY 2013-2015.

Step Two Adjustments – 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 the 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.

About four of five minority/women-owned firms counted in the base figure are noncertified. Caltrans experience, other state departments of transportation, and the Study research indicate 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.
- Documented 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.

Caltrans considered the DBE attainment over the last 4.5 years. As shown in the chart below, DBE attainment was lower under a wholly race-neutral DBE program. Caltrans may only count certified DBEs in the DBE utilization reports prepared and submitted to FHWA. The following table summarizes Caltrans DBE attainment as reported for the last 4.5 years:

Federal Fiscal Year	Goal	DBE Attainment
2012*	13.5%	7.99%
2011	13.5%	7.20%
2010	13.5%	7.40%
2009	13.5%	3.40%
2008	13.5%	4.10%

*six month report for FFY 2012

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.** There appears to be disparities in the advancement of Hispanic Americans to certain construction occupations and first-line supervisory positions. Compared to non-Hispanic whites (and men), relatively few African Americans, Hispanic Americans, and women working in construction are managers.
- **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), then there would be about 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 have smaller loan 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.²

- **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 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 the Caltrans 2012 Disparity 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 (BGPAA), a 2010 study for the San Diego County Regional Airport Authority (SDCRAA), and a 2010 study for a consortium of Southern California transportation agencies (the Consortium).³” The study team included information from these interviews to provide Caltrans with additional information on marketplace conditions throughout the state.

² 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 Enterprises (MBE/WBE) firms or the relative concentration of MBE/WBEs in different subindustries.

³ The Consortium study included of five Southern California transportation agencies: Los Angeles County Metropolitan Transportation Authority (Metro), the Southern California Regional Rail Authority (Metrolink), the Orange County Transportation

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 2012 Caltrans disparity study for several reasons, including but not limited to:

- The other studies often focused on a smaller region other than the State of California;
- The agencies involved in the studies may have had different sizes, types and locations of contracts than the contracts studied for the Caltrans 2012 disparity study;
- The agencies involved often used different bid or proposal processes than Caltrans;
- The agencies involved were often using their own implementation of the Federal DBE program; and
- The 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.

However, taking all of these factors under consideration, they appear to offset or cancel each other out and compel Caltrans to not make any Step Two adjustments to the base figure of 12.5% for the FFY 2013-2015 overall DBE goal.

Public Participation Section 26.45(g)

Consultation

Caltrans has conducted year-round consultation by hosting 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 consultation in the year included meetings with non-DBE organizations such as:

- Associated General Contractors.
- 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 also 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.

Stakeholder Discussion Group: Consisted of prime contractors, DBEs, and Local agencies.

Caltrans continued to have over 1,000 one-on-one discussions on the goal and methodology and race-neutral measures with small businesses (SB), DBEs and minority/women-owned firms as they sought help on how to do business with Caltrans. Based on the public consultations and discussions throughout the year, 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.”
- Enforcement of the “good faith effort” 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 obtained within the last year are identical to the comments received during the anecdotal interviews and public hearing testimony collected by BBC for the Study.

Published Notice

On September 14, 2012, Caltrans publish a public notice requesting comment on the proposed FFY 2013-2015 overall DBE goal and methodology. The FFY 2013-2015 annual overall DBE goal and methodology was made available at the Caltrans Office of Business and Economic Opportunity in Sacramento, each of the 12 Caltrans District Offices, via the Caltrans’ Web site, and by e-mail throughout the comment period which closed on October 31, 2012. The public notices were listed and published in the following publications on September 13 and 14, 2012:

Appeal Democrat

Bakersfield News Observer

La Oferta

La Opinions

Record Searchlight

Sacramento Bee

<i>Black Voice</i>	<i>LA Times</i>	<i>Sacramento Observer</i>
<i>Daily Construction Service</i>	<i>Los Angeles Sentinel</i>	<i>San Diego Union</i>
<i>DBE Good Faith.com</i>	<i>Mercury News</i>	<i>Sing Tao</i>
<i>Dodger Construction News</i>	<i>Miniondas</i>	<i>The Record</i>
<i>Eastside Sun</i>	<i>Oakland Post</i>	<i>The Sun</i>
<i>El Chicano</i>	<i>Oakland Tribune</i>	<i>The Tribune</i>
<i>International Daily News</i>	<i>Orange County Register</i>	<i>Time Standard</i>
<i>Inyo Register</i>	<i>Philippine News</i>	<i>Vietnam Daily News</i>
<i>Korea Times</i>	<i>Press-Enterprise</i>	<i>World Journal</i>
	<i>Rafu Shimpo</i>	

Caltrans also conducted 12 public comment forums at each of the district offices throughout California (Eureka, Redding, Marysville, Stockton, Oakland, Fresno, Bishop, San Luis Obispo, Los Angeles, San Bernardino, Irvine and San Diego). Caltrans sent out approximately 25,000 emails with the forums schedule, time and locations and had a total of 78 attendees at the 12 public forums that provided comments and a total of 11 comments submitted via email which only 3 were related to the goal and methodology.

Summary of Comments:

PUBLIC COMMENTS CONCERNING THE GOAL AND METHODOLOGY:

A. Caltrans has reviewed public comments from the following:

A.1. General Contractors

A.1.1. Several General Contractors stated the California Unified Certification Program (CUCP) is onerous to work with because there are invalid businesses in the CUCP database which in turn requires extra labor hours on the contractor's part to try and find ready, willing and able businesses to bid on contracts.

A.1.1.1. *Caltrans response: Caltrans is currently improving and updating the CUCP database and reviewing those businesses that are not ready, willing and able to bid on highway construction and architectural and engineering contracts.*

A.1.2. Various Contractors stated due to the fact that there are invalid businesses in the CUCP database, contract specific goals may be higher than what they should be because contract goals are based on businesses available to do work in the CUCP database.

A.1.2.1. *Caltrans response: The CUCP database is being updated, and contractors will have more accurate information when reaching out to DBEs to meet contract goals. Also, Caltrans still accepts Good Faith Efforts from general contractors unable to find DBEs to do contract work, but the objective is to meet the goal first. Caltrans also takes into consideration overrepresentation of DBE firms in the CUCP.*

A.2. Disadvantaged Business Enterprises (DBEs)

A.2.1. Several DBEs were unhappy the overall DBE goal was being lowered from 13.5% to 12.5%.

A.2.1.1. Caltrans response: The annual overall DBE goal was lowered from 13.5% to 12.5% because the base figure was also lowered from 13.5% to 12.5%. The base figure was lowered due to the lower overall availability of DBEs in the 2012 Disparity Study. Therefore, DBE availability is due to some DBEs no longer in business and some DBEs growing and no longer qualifies as a DBE. The annual overall goal does not affect individual contract goals.

A.2.2. One DBE (the business is owned by a male who is quadriplegic) asked why DBEs that are majority owned were not included in the study and in turn there is no information on whether these groups are being discriminated against. In his opinion, his company was being discriminated against and believes this small group of DBEs should be placed into the race-conscious group.

A.2.2.1. Caltrans response: When conducting a Disparity Study, Caltrans follows the guidelines set forth by the United States Department of Transportation. The aforementioned guidelines stipulate contract data be collected solely for the minority and women owned groups described in 49CFR Part 26. The guidelines do not stipulate collecting contract data on any other groups, but the comments have been noted for future consideration.

A.2.3. Several DBEs believed the overall DBE goal should be increased because the Hispanic-American business owners are being placed into the race-conscious group which there will be more DBEs bidding on the same contracts and thus lowering their chances of acquiring the bid.

A.2.3.1. Caltrans response: The annual overall DBE goals are based on potential DBE availability in California. Even though the DBE goal was lowered by 1%, Caltrans DBE contract goals can only be met by using those certified DBEs in the CUCP database. The addition of Hispanic-American owned businesses and Subcontinent-Asian Americans will allow general contractors more DBEs to assist them in meeting individual contract goals which in turn assist in meeting Caltrans overall annual goal.

A.3. Small Business Council (SBC) members submitted written comments (no responses provided) via mail and or website and verbal comments at the public forums outlining multiple issues with the 2012 Disparity Study as outlined below:

A.3.1. A SBC member stated that the base figure for Architectural and Engineering contracts should be 33%. This member also wanted to know why Caltrans did not consider a Step 2 adjustment upward.

A.3.1.1. Caltrans response: Caltrans examined a broad range of evidence in the Study when considering possible Step Two adjustments to the base figure. Caltrans decided not to make any Step Two adjustments to the base figure for the overall DBE goal due to the fact there was an equal amount of data supporting a Step 2 increase, as well as a Step 2 decrease adjustment. Caltrans will continue to encourage DBE certification and annually monitor the base figure for potential adjustment.

A.3.2. A SBC member complained that the 45-day comment period was not long enough.

A.3.2.1. *Caltrans response: Caltrans is following direction given in 49 CFR Part 26 allowing for public comment for 45 days.*

A.3.3. A SBC member submitted a document with comments concerning the proposed overall goal and methodology. Below is an outline of the comments;

A.3.3.1. 33% of firms available for federally-funded transportation construction and engineering contracts are minority/women-owned. Justify why Caltrans did not use this initial base figure. The second sentence in this paragraph conflicts with the statement that minority/women-owned firms are available.

A.3.3.1.1. *Caltrans response: The study team used a custom census approach to estimate the availability of MBE/WBEs and majority owned businesses for the 15,446 construction and engineering prime contracts that Caltrans and sub recipient local agencies awarded during the study period. The study team examined availability on a contract-by contract basis and then dollar weighted the results for different sets of contract elements. Overall, MBE/WBE availability for Caltrans and Local Agencies transportation contracts is 18.1 percent. The base figure of 12.5 percent was calculated using the same availability approach described above except calculations only included potential DBEs. Potential DBEs are only those MBE/WBEs that appear they would qualify for DBE certification.*

A.3.3.2. Define the dollar-weighted availability of minority/women owned firms. By using this unknown dollar-weighted availability, the base figure goes from 33% as noted in Item 1 to 18.1% which is a 14.9% drop. Justify why the significant drop.

A.3.3.2.1. *Caltrans response: Dollar-weighted availability estimates represent the percentage of Caltrans transportation contracting dollars that might go to MBE/WBEs based on their availability for specific types and sizes of Caltrans' and Local Agencies' construction and engineering prime contracts and subcontracts. The study team's approach to calculating availability was a bottom-up, contract-by-contract "matching" approach that measured availability overall and separately for particular sets of prime contracts and subcontracts.*

A.3.3.3. Justify how the consultant determined with certainty that 5.6% of the 18.1% available firms do not meet the DBE certification criteria. Who are these firms and what evidence is used to determine the firms do not meet the certification criteria.

A.3.3.3.1. *Caltrans response: The availability analysis focused on specific areas of work (i.e., sub industries) related to the types of transportation-related construction and engineering contracts that Caltrans awarded during the study period. The study team identified specific sub industries for inclusion in the availability analysis and identified the geographic market areas in which Caltrans awarded most of the corresponding contract dollars (i.e., the relevant geographic market area). The study team then developed a database of potentially available businesses through interviews with local business establishments within relevant sub industries. DBE Certification criteria is based upon 49 CFR Part 26.*

A.3.3.4. Did BBC interview and/or survey the 4000 certified DBEs and the 25,000 certified SBs on the DGS directory? How about the MBE/WBE/SBE directories maintained by the Public Utilities Commission, LAMTA, SFMTA, and other large local government agencies that have listings of MBE/WBE/SBE firms in transportation and or transit related industries? Sounds like BBC did not survey an adequate number of minority/women owned firms who are in business and should be counted in the availability analysis.

A.3.3.4.1 The study team conducted telephone interviews with business owners and managers to identify businesses that are potentially available for Caltrans and local agency transportation-related construction and engineering prime contracts and sub contracts. The study team began the interview process by collecting information about business establishments from Dunn & Bradstreet (D&B) Marketplace listings. The study team collected information about all business establishments listed under an 8-digit sub industry specialization code that were most related to the transportation-related construction and engineering contracts that Caltrans awarded during the study period. D&B provided 46,196 business listings related to those work specialization codes.

A.3.3.5. As for the factors cited as reasons not to make a step two adjustment—these are the same results as in the 2007 disparity study. Caltrans and FHWA knew from the 2007 Disparity Study that minority and women face challenges in the transportation field. You have known since 2007 that we need supportive services and OJT assistance. Yet, Caltrans has not had a supportive services contract to assist minority/women owned and DBEs firms with business formation, ownership, access to capital, business loans, bonding, insurance, and business earnings since 2008. FHWA gave Caltrans OJT money in 2009 to address lack of education in transportation trades, employment assistance and job advancement—the same barriers identified in the study and letter...so nothing has changed. I remember Caltrans and FHWA saying that over \$4 million in OJT proposals were submitted for funding. Then there was a press release by FHWA in DC that over \$3 million in ARRA OJT funding was granted to California. Who received the money? What happen? How can Caltrans say it's removing barriers and then not providing supportive services and OJT?

A.3.3.6. The goal and methodology does not mention how Local Agencies will comply with assisting Caltrans in meeting the overall DBE goal. What are they doing to help Caltrans implement the requirements of Fostering a SB Program?

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

A.4. Local Agencies

A.4.1. Metropolitan Transportation Commission local agencies stated the recent changes to the overall goals, with the termination of the Caltrans waiver, and now further changes make their jobs more difficult. They plan task orders with “look ahead’s” and constant changing in goals and groups leaves them not knowing which goals and groups to use.

A.4.1.1. Caltrans response: Caltrans is following direction given by FHWA. Caltrans will expediently notify local agencies and all stakeholders when changes to the DBE program or DBE contract goals are made to lessen the confusion and difficulties placed upon local agencies and organizations. The Division of Local Assistance is also providing training to the local agencies.

A.5. Associated General Contractors of America (AGC), San Diego Chapter submitted a written document outlining multiple issues with the 2012 Disparity Study. The documented issues are outlined below:

A.5.1. AGC stated the 2012 Disparity Study does not identify discrimination by Caltrans in the awards of prime contracts.

A.5.2. AGC stipulates a statistical disparity study may raise an inference of prejudice but it does not, stand alone, and demonstrate that actual prejudice exists.

A.5.3. AGC wrote the 2012 Disparity Study's anecdotal information fails to provide justification for Caltrans' race- and sex-conscious measures.

A.5.4. AGC stated Caltrans failed to address overconcentration.

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

Overall DBE Goal for FFY 2013-2015 and Race/Gender- Neutral/Conscious Measures – sections 26.45(e) and 26.51

Race-Neutral/Conscious Projection

Based on the information collected and data reviewed, Caltrans has established an overall annual goal of 12.5 percent DBE participation for FFY 2013-2015. This overall goal is expected to be achieved in proportions of 3 percent with race-neutral measures (median by past participation, FFY 2007 - 6.6%, FFY 2008 – 4.6%, FFY 2009 – 2.7%, FFY 2010 – 2.9%, FFY 2011 2.5%) and the remaining balance of 9.5 percent met through 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.

Race-Neutral Measures

Caltrans currently has a broad range of neutral measures in place to encourage the participation of all small businesses – including DBEs – in its transportation contracts. The agency plans on continuing 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 via supportive services contracts.
- Improved contracting processes.
- Data collection, monitoring, and reporting of DBEs

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

One of the most successful measures has been providing DBE Supportive Services that consist of technical training and one-on-one technical assistance to DBE firms. Caltrans is currently in the process of re-establishing similar types of contracts to enhance the participation of DBEs.

Another successful measure has been the appointment of Small Business (SB) liaisons in each of the 12 district offices as a point of contact for SB firms, including DBEs, in those geographic areas as well as for focused outreach, such as local procurement fairs and SB events.

DBE Program highlights in FFY 2012 include:

- The Small Business Administration and Caltrans signed a Memorandum of Understanding for a Surety Bond Guarantee Program to provide free assistance to DBEs. It is the first such partnership in the country.
- Caltrans established several workgroups with members from the Associated General Contractors (AGC), American Council of Engineering Companies (ACEC), United Contractors (UCON), National Concilio of America, California Small Business Entrepreneurs, Asian American Architects and Engineers, Chambers of Commerce, and Southern California Native American Tribes; to collaborate on several areas, such as, increasing DBE participation, DBE data collection, outreach, good faith effort, and others.
- Performance Bond requirements for Minor B projects have been waived.
- Developed a Data Management System to capture all subcontracting activities.
- Caltrans created a DBE brochure with vital information for DBEs.
- Caltrans created a Calmentor/Mentor-Protégé Newsletter.

Caltrans continues to maintain a Bidders List on the Caltrans Office Engineer (OE) Web site. In addition, an “opt-in” feature has been added to the OE Web site to allow 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 FFY 2013-2015 efforts will focus on:

- Continue to expand the Cal-Mentor/Mentor-Protégé Program statewide which includes construction, as well as architectural and engineering.
- Regularly scheduled Mandatory Pre-Bid conferences in all districts.
- Expanding the Web site for easier access to information needed by SB and DBE firms and 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 SB and DBEs.
- Looking for opportunities to package smaller contracts.
- Increasing the number of certified DBE firms by outreaching to all potential DBEs in California.

Race-Conscious Measures

The race-conscious goal will be achieved by:

- Setting a UDBE goal on individual contracts based upon the type of work included in each contract and on the availability of the five targeted groups capable of performing such work.
- Using Appendix A, Good-Faith Effort Standards, to justify the award when the goal is not met.
- Encouraging prime bidders to use additional DBEs, whenever possible, as a race-neutral component.

Waiver of Prohibition on the Use of Group Specific Goals Section §26.15. A portion of the overall goal will be met using race-conscious measures. Caltrans will be requesting a waiver to implement race-conscious goals of limited application to five identified groups (Women, Asian-Pacific Americans, Hispanic Americans, Native Americans, and Black Americans).