

SECTION ES.

Executive Summary

BBC Research & Consulting conducted this study to assist the San Diego County Regional Airport Authority (SDCRAA or the “Authority”) with making decisions concerning its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program and Federal Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program.¹ The study examined the share of Airport contract dollars going to minority- and woman-owned firms compared with what would be expected based on the relative availability of those firms to perform Airport work.

SDCRAA must implement the Federal DBE and ACDBE Programs to receive U.S. Department of Transportation (USDOT) funds. Recent court decisions and guidance from USDOT have led the Authority to reexamine how it implements the Programs. In January 2006, the Authority discontinued its use of DBE contract goals/good faith efforts for certain contracts funded by the Federal Aviation Administration (FAA). The Authority does not include ACDBE goals on new concessions contracts.

This executive summary provides information pertaining to:

- A. Setting an annual aspirational goal for DBE participation in FAA-funded contracts;
- B. Determining achievement of the annual aspirational goal through neutral means;
- C. Initiatives applicable to the Airport’s locally-funded contracts (contracts for which the Federal DBE Program does not apply); and
- D. Future implementation of the Federal ACDBE Program.

A. Setting an Annual Aspirational Goal for DBE Participation in FAA-funded Contracts

Each year, USDOT requires the Authority to submit an annual aspirational goal for overall DBE participation in FAA-funded contracts. The Federal DBE Program requires a “base figure analysis” and consideration of any “step 2” adjustments in deriving an annual goal.

Base figure analysis. BBC’s analysis of the relative availability of local minority- and women-owned firms for Airport FAA-funded contracts indicates that the Authority should consider 17.2 percent as the base figure for its overall annual aspirational goal for DBE participation. This figure is similar to the Authority’s 17 percent overall annual aspirational DBE goal for FFY 2010.

¹ BBC conducted the disparity study for SDCRAA at the same time as its joint disparity study for five Southern California public transportation agencies, which agreed to share certain information between the studies. The five public transportation agencies were Los Angeles County Metropolitan Transportation Authority, the Southern California Regional Rail Authority, Orange County Transportation Authority, San Diego Association of Governments and San Diego Metropolitan Transit System.

Consideration of possible step 2 adjustments. The Federal DBE Program requires agencies to consider specific types of information regarding the relative availability of DBEs before finalizing the annual aspirational DBE goal.² This process is referred to as consideration of a “step 2” adjustment, which can be downward or upward. BBC’s in-depth analysis of each factor outlined in the Federal DBE Program suggests that SDCRAA consider one of the following options concerning a step 2 adjustment.

Option 1 – making an upward step 2 adjustment. Several factors suggest that the Authority consider a higher overall aspirational goal than the 17.2 percent base figure:

- The Authority could consider adopting an annual aspirational goal of 23.5 percent, which represents DBE availability after accounting for disparities in business ownership rates for women and certain minority groups in the Southern California transportation contracting industry.
- Evidence of disparities in access to capital and other factors also supports an annual aspirational DBE goal higher than 17.2 percent. Section VI and supporting appendices of the report discuss these results.

Option 2 – making no step 2 adjustment. The Authority could adopt the 17.2 percent base figure for its annual aspirational goal for DBE participation without making a step 2 adjustment. The Federal DBE Program does not require agencies to make a step 2 adjustment as long as they can provide justification for that decision.

Option 3 – making a downward step 2 adjustment. BBC’s estimate of the participation of minority- and women-owned firms (MBE/WBEs) on FAA-funded contracts for 2003 through 2007 was 4 percent, which may represent a minimum demonstration of “current capacity of DBEs to perform work.” The Authority could conclude that a downward adjustment from the 17.2 percent base figure is warranted.

B. Determining Achievement of the Annual Aspirational Goal Through Neutral Means

USDOT requires agencies to meet the maximum feasible portion of their annual goals using race- and gender-neutral means. Neutral efforts are programs and other initiatives that assist small businesses in general and are not limited to minority- or women-owned firms. The Authority’s current implementation of the Federal DBE Program is solely race- and gender-neutral. USDOT suggests factors for agencies to consider when determining the percentage of an annual goal to be met through neutral means, including analyzing relative utilization of MBE/WBEs on contracts that do not include DBE goals.³

² See 49 CFR Section 26.45 (d) and Section VI of the disparity study report for a discussion of each factor.

³ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>.

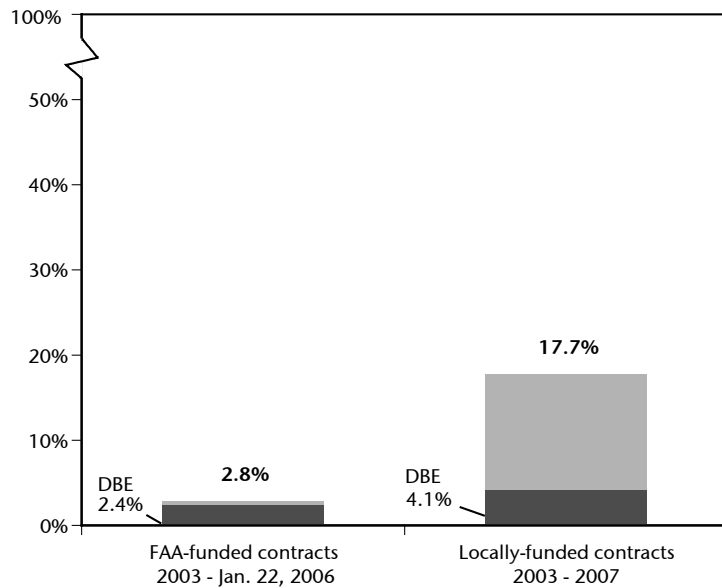
MBE/WBE utilization on contracts with and without goals. Because the Airport has not operated a race- or gender-conscious DBE program on its locally-funded contracts, the study team compared MBE/WBE utilization on FAA-funded contracts between 2003 and January 22, 2006 — for which DBE contract goals were in place⁴ — to locally-funded contracts for 2003–2007.

Figure ES-1 shows MBE/WBE utilization for FAA-funded contracts that included DBE contract goals and for locally-funded contracts that did not. MBE/WBEs received 2.8 percent of total FAA-funded contract dollars between 2003 – January 22, 2006 (including subcontract dollars). By comparison, MBE/WBEs received 17.7 percent of locally-funded contract dollars from 2003 through 2007, a larger percentage than the study team observed for the FAA-funded contracts when the DBE contract goals program applied.⁵

Figure ES-1.
MBE/WBE and DBE share of prime contract/subcontract dollars for SDCRAA FAA- and locally-funded transportation contracts

Note:
 Certified DBE utilization.
 Number of contracts/subcontracts analyzed is 280 for 2003–Jan. 22, 2006 FAA-funded contracts and 852 for 2003–2007 locally-funded contracts.
 For more detail and results by group, see Figures C-2 and C-4 in Appendix C.

Source:
 BBC Research & Consulting from data on SDCRAA contracts.



The share of subcontract dollars going to minority- and women-owned firms was about the same for FAA-funded contracts with the DBE contract goals program and locally-funded contracts without the DBE contract goals (about one-quarter of dollars for each set of subcontracts). Sections IV and V and Appendix C of the report present further exploration of MBE/WBE utilization on subsets of Airport prime contracts and subcontracts, including results for specific contract types and sizes.

Disparity analysis. The above results concerning the Authority’s utilization of MBE/WBEs do not indicate whether or not there was overutilization or underutilization of minority- and women-owned firms on Airport contracts. To answer that question, BBC compared SDCRAA’s utilization of MBE/WBEs to what would be expected based on the availability of minority- and women-owned firms for work that the Airport awarded during the study period.

⁴ SDCRAA discontinued the use of DBE contract goals/good faith efforts on FAA-funded contracts beginning January 23, 2006. There are a limited number of FAA-funded contracts from January 23, 2006 through December 2007 that BBC examined as well, as discussed in Section V.

⁵ This analysis counts firms as MBE/WBEs if they are certified as MBE/WBEs and/or as DBEs and when they indicate minority or female ownership and are not certified (because they are too large to meet certification criteria, have let certification lapse, have chosen not to be certified, or for other reasons).

From information collected through telephone interviews with local contractors and vendors and through analysis of specific Airport prime contracts and subcontracts, BBC determined that 24.5 percent of the FAA-funded contract dollars that SDCRAA awarded between 2003 – January 22, 2006 would be expected to go to minority- and women-owned firms after considering a number of factors about each firm, including specialization, qualifications and interest.⁶ Actual MBE/WBE utilization — 2.8 percent — was far below the 24.5 percent figure.

Dividing percent utilization of MBE/WBEs by overall availability and multiplying by 100 produces a “disparity index.” A disparity index of 100 indicates parity between actual utilization and availability for a particular group and an index less than 80 may represent a “substantial disparity” between utilization and availability for a group.

The results from BBC’s disparity analysis indicate the following:

- The disparity index for MBE/WBEs was 12 for FAA-funded contracts dollars when DBE contract goals were in place. In other words, on average, MBE/WBEs received 12 cents out of every dollar those firms would be expected to receive based on availability.
- The study team observed a substantial disparity for each MBE/WBE group analyzed — African American-, Asian Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms.
- The disparity index for locally-funded contracts was 54, also a substantial disparity (but much higher than for FAA-funded contracts).

Based on this information, there is a need for the Authority to expand its efforts to assist minority- and women-owned firms. However, the Authority must still consider whether or not it should continue to implement the Federal DBE Program using entirely race- and gender-neutral measures, as discussed below.

Race- and gender-neutral efforts. The Federal DBE Program requires agencies to meet the maximum feasible portion of their overall annual DBE goals through race- and gender-neutral means. The Authority and many other organizations in the San Diego area have implemented a number of small business assistance programs and other race- and gender-neutral initiatives. In addition to continuing its own neutral programs and referring firms to other local resources, the Authority should consider several additional race- and gender-neutral initiatives, including some that promote small business participation as prime contractors in Airport contracts (see Section VI).

Race- and gender-conscious programs. Based on its assessment of the effectiveness of neutral efforts, the Authority might consider including certain race- and gender-conscious programs in its implementation of the Federal DBE Program. However, DBE contract goals do not appear to have been effective in addressing disparities in the Airport’s utilization of MBE/WBEs on FAA-funded contracts.

⁶ Minority- and women-owned firms comprise 38 percent of the 2,020 businesses BBC examined as potentially available for specific types of Airport transportation prime contracts and subcontracts. Availability figures for the disparity analysis are calculated after considering the types and sizes of specific Airport contracts and subcontracts (and dollar-weighted) and are not based on a simple “head-count” of minority- and women-owned firms.

The Federal DBE Program allows for stronger remedies focusing on DBE prime contractors, but only in extreme circumstances. For example, the Federal DBE Program states, “You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.”⁷

The Airport could consider implementing programs that would restrict bidding or establish preferences for certified small businesses before evaluating whether such programs should be limited to MBE/WBEs.

If the Authority considers any race- and gender-conscious programs, it should carefully examine which DBE groups are eligible for that assistance. Guidance from FAA indicates how the Airport should operate any future DBE contract goals program in which eligibility is limited to certain race/ethnic/gender DBE groups, which includes a request for a waiver from USDOT.⁸ However, the information from this disparity study indicates substantial disparities for each DBE group for combined FAA- and locally-funded contracts.

Program review. The Federal DBE Program requires ongoing review of program effectiveness. The Authority needs metrics to evaluate the success of its DBE program, including careful tracking of MBE/WBE participation (in addition to certified DBEs) in both FAA- and locally-funded contracts.

C. Initiatives Applicable to the Airport’s Locally-funded Contracts

Neutral remedies. SDCRAA should consider expanding neutral programs related to its locally-funded contracts as well as to its FAA-funded contracts.

Race- and gender-based programs for locally-funded contracts. At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits the Authority from implementing programs including race, ethnic or gender preferences related to its locally-funded contracts. However, SDCRAA should monitor developments in a case involving San Francisco’s implementation of a race- and gender-conscious program for its locally-funded contracts.⁹

At the time of this report, the issues raised in the San Francisco case were under review by the California Supreme Court. It is possible that a future decision in the case could impact certain state restrictions on the Airport’s ability to use race- and gender-conscious remedies for its locally-funded contracts. Any such programs could still be challenged as a violation of the U.S. Constitution and be subject to a strict scrutiny standard of review.

⁷ 49 CFR Section 26.43.

⁸ http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/

⁹ *Coral Construction, Inc. v. City and County of San Francisco*, 57 Cal.Rptr.3d 781 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007).

D. Future Implementation of the Federal ACDBE Program

Current ACDBE overall aspirational goal. In January 2009, the Authority prepared an ACDBE goal for federal fiscal years 2009 through 2011. The Authority has adopted an overall aspirational goal of 25 percent ACDBE participation in airport concessions for this period using a method for goal-setting approved by USDOT.

Future goal-setting. One approved method for establishing an overall aspirational ACDBE goal is to examine relative ACDBE representation on an “Active Participants List,” which is a compilation of firms that have participated or attempted to participate in an airport’s concessions in previous years. Neither the Authority nor HMS Host, its master concessionaire, maintains a formal active participants list. In Section VII of the report, BBC outlines how such a list could be developed in time for the Authority to establish an ACDBE goal for FFY 2012–2014.

As with the Federal DBE Program, the ACDBE Program allows airports to adjust overall aspirational goals for ACDBE participation considering “step 2” factors.

MBE/WBE utilization. Minority- and women-owned firms accounted for 24 percent of Airport concessions from 2003 through 2007 as measured by dollar volume of concessions revenue. The Authority achieved that level of participation primarily through ACDBE goals set on certain concessions contracts at the time those contracts were bid. Because concessions contracts are often in place for many years, the effects of the original contract goals continue today. The Authority currently does not include ACDBE goals for new concessions contracts.

Future programs relating to concessions. As with the Federal DBE Program, the Federal ACDBE Program requires that agencies maximize the use of race-neutral measures to encourage the participation of MBE/WBEs.¹⁰ The specific types of future programs needed to encourage ACDBE participation in Airport concessions depend, in part, on the overall concessions model the Authority will employ. Section VII reviews a number of concessions models and neutral remedies the Authority could expand or introduce.

Summary

The Authority should consider a base figure of 17.2 percent for its overall aspirational goal for DBE participation in its FAA-funded transportation contracts, with possible adjustments based on the step 2 factors explained in this report. The Authority will need new and expanded programs to meet that goal.

The Authority achieved relatively low levels of MBE/WBE participation in its past contracts whether or not the DBE contract goals program applied. The Authority should first consider addressing these disparities through new and expanded neutral efforts, especially those that improve small business access to Airport prime contracts. Certain initiatives pertain to the Airport’s contracting processes and others will require additional financial resources and collaboration with other local agencies.

If its ongoing tracking and review indicate that race- and gender-conscious efforts are necessary, the Federal DBE Program provides guidance on how the Authority should consider and potentially implement programs for specific DBE groups.

¹⁰ 49 CFR Part 23.25 (d)