

SECTION III.

Analysis of MBE/WBE Availability

BBC analyzed the relative availability of minority- and women-owned firms that are ready, willing and able to perform Airport contracts and subcontracts. Minority- and women-owned firms comprise 38 percent of the 2,020 businesses BBC examined as possibly available for specific types of Airport transportation prime contracts and subcontracts. Because BBC performed the availability analysis on a dollar-weighted basis given the sizes, types and other characteristics of individual prime contracts and subcontracts, MBE/WBE availability differs for each set of Authority contracts.

Section III contains four parts:

- a. The steps in the availability analysis.
- b. The base figure for the annual aspirational DBE goal for FAA-funded contracts. The base figure includes certified DBEs as well as minority- and women-owned firms that appear that they could be DBE-certified, even if they have never applied for certification.
- c. Availability results for the disparity analysis (preparing benchmarks to apply in the disparity analysis).
- d. In-depth discussion of certain issues in an availability analysis.

The availability benchmarks for the disparity analysis examine all minority- and women-owned firms whether or not they are or could be certified as DBEs.

A. Steps in the Availability Analysis

BBC developed the database of available firms through interviews with thousands of firm owners and managers in the Southern California transportation contracting industry and BBC's analysis of more than 1,100 Authority transportation prime contracts and subcontracts. This method of examining availability is sometimes referred to as a "custom census."

BBC's summary of the availability analysis examines:

1. The relevant geographic market area and procurement areas for Airport work;
2. The database of available firms; and
3. Calculating dollar-weighted availability.

1. Relevant geographic market area and procurement areas for Airport work. The availability analysis pertains to the Authority's contracts. As such, the availability analysis focuses on:

- Firms doing business within the work types selected for the disparity study (e.g., specific types of construction, engineering, material and equipment work as discussed in Section II); and
- Businesses with locations in Southern California.

Availability interviews asked about the geographic area where a firm works. To be included as potentially available for Authority prime contracts and subcontracts, a firm must (a) have a location within the San Diego area or (b) have a location in the Greater Los Angeles area and report working in the San Diego area.

2. The database of available firms. BBC collected information from firm owners and managers to identify firms potentially available for Airport work:

- **Firms interviewed in the Caltrans Availability and Disparity Study.** One portion of the SDCRAA availability database is Southern California transportation construction and engineering firms that BBC contacted as part of the Caltrans Availability and Disparity Study completed in 2007. BBC included businesses from the Caltrans study that (a) had locations in Southern California, (b) reported working within subindustries relevant to Authority contracts, (c) indicated that they were available for local government transportation projects and (d) worked in the San Diego area. Businesses meeting these criteria were included in the database of companies potentially available for Authority work. (As discussed in Appendix B, firms had to also meet other criteria to be available for specific Airport prime contracts or subcontracts of certain types and sizes.)
- **Firms interviewed in the Southern California Regional Disparity Study.** A second portion of the SDCRAA availability database is comprised of Southern California transportation construction, engineering, material and equipment firms that BBC contacted as part of the Southern California Regional Disparity Study. BBC conducted availability interviews in 2008 and early 2009 as part of this study for five transportation agencies including the San Diego Association of Governments (SANDAG) and the San Diego Metropolitan Transit System (MTS).

The Regional Disparity Study encompassed some types of transportation contracting work relevant to the five transportation agencies that were not a part of the Caltrans study (e.g., security services and hydraulic equipment). Results of these interviews with Southern California businesses are included in the availability database for the Airport disparity study.

In addition, BBC attempted to identify and contact each firm in the transportation contracting industry in Southern California that Dun & Bradstreet identified as new since the telephone interviews for the Caltrans study.

- **Firms interviewed as part of the SDCRAA study.** BBC developed the final part of the availability database for the SDCRAA disparity study through telephone interviews with Southern California firms in procurement areas relevant to Airport contracts that were not examined in the Caltrans study or Southern California Regional Disparity Study.

For example, firms providing sound insulation services were not researched in the studies for Caltrans or the Southern California local transportation agencies. BBC identified Southern California firms doing business in this subindustry and other pertinent fields from Dun & Bradstreet. BBC attempted to contact each of these firms to assess their availability for specific types and sizes of Airport contracts and subcontracts. These telephone interviews were conducted in 2008 and 2009.

Overview of the availability interviews. In the Caltrans, Southern California Regional Disparity Study and Airport study telephone interviews, BBC obtained all business establishment listings under the eight-digit industry codes maintained by Dun & Bradstreet (D&B) that were most pertinent to the procurement areas in that study.

BBC then worked with Customer Research International (CRI), which performs business and consumer interviews throughout the country, to conduct telephone interviews with the owners or managers of identified business establishments. These interviews collected information such as:

- Qualifications and interest in transportation contracting (or related materials and equipment) for local agencies;
- Qualifications and interest in work as a prime, a subcontractor or a supplier/trucker;
- Firm specialization;
- The largest contract or subcontract bid on or performed in the past five years;
- Geographic scope of service (e.g., Greater Los Angeles area, San Diego area);
- How long the firm has been in business;
- Race/ethnicity/gender of firm ownership;
- Number of employees in California; and
- Gross revenue.

Firms BBC included as potentially available for Authority contracts or subcontracts were those reporting that they (a) perform types of work relevant to Airport contracts, (b) are qualified and interested in work as a prime contractor or subcontractor for local agencies, (c) have performed or bid on such contracts or subcontracts in the past and (d) work in the San Diego area. Appendix B includes one of the survey instruments used for these interviews.

3. Calculating dollar-weighted availability. The availability database for the Airport disparity study included 2,020 businesses, but only a subset of firms were included as potentially available for a particular Airport prime contract or subcontract. BBC examined the characteristics of the specific prime contract or subcontract including type of work involved, contract size and date and then identified firms in the availability database that performed that type of work, role and size of contract— a “bottom-up” approach to determining availability, as explained on the following page.

When calculating relative MBE/WBE availability, BBC examined more than 1,100 Authority contract elements and the availability of minority- and women-owned firms associated with each element. To be counted as available for an individual Airport contract or subcontract, firms must have reported that they perform the type, size and contract role related to the work on that contract element:

1. For each Authority contract element (prime contract, subcontract, supply portion, etc.), BBC determined the type of work, contract role and size of the work.
2. BBC then identified firms in the availability database that report they are qualified and interested in performing that role for the specific type of work for local governments, *and* have bid on or performed work of that size, *and* are available to work in the San Diego area *and* were in business in the year of the contract.
3. BBC counted the relative number of minority- and women-owned firms among all firms available for that specific type of work (e.g., three white woman-owned firms and one African American-owned firm, and 16 majority-owned firms out of 20 firms available to perform that contract element).
4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element (in the above example: WBEs are 3/20ths of available firms, or 15 percent relative availability; African American-owned firms represent 1/20th of available firms, or 5 percent relative availability).
5. BBC weighted the relative availability for each prime contract and subcontract by the dollars of work corresponding to each contract element.
 - BBC multiplied percentage availability by the dollars associated with each Airport contract element;
 - Added the results across contract elements; and
 - Divided by total dollars for all Authority contract elements to produce a dollar-weighted estimate of overall availability.

The process summarized above was used for both the base figure analysis and to determine relative MBE/WBE availability for a particular set of contracts or subcontracts examined in the disparity analysis. Overall results are presented in the following pages.

B. Results of the Base Figure Analysis

BBC translated results of the availability analysis into a base figure for Authority FAA-funded transportation contracts. The following discusses:

1. Components included in the base figure analysis;
2. Types of Airport procurement not included in the base figure analysis; and
3. The base figure calculated for Airport FAA-funded contracts.

1. Components included in the base figure analysis. BBC classified Authority FAA-funded contracts into one of six groups. Three groups were included in the calculations of the overall annual aspirational goal:

- Construction, engineering, and material and equipment contracts that were examined in the utilization and availability analyses.
- Similar types of procurements that were not included in the utilization and availability analyses, but that should be incorporated into the goal.
- Types of procurements made from national markets or that are unique with limited or no DBE availability (and not studied in the utilization and availability analyses).

Procurements examined in the utilization and availability analyses. Section II describes the types of procurements included in the analysis of MBE/WBE utilization and availability in this disparity study. BBC separately portrays the dollars and availability for construction, engineering and related services, and material and equipment in the first three rows of Figure III-1 on the following page.

Data for each category include the following four columns of Figure III-1:

- a. Dollars of FAA-funded contracts for 2003 through 2007.
- b. Dollars as a percentage of total contract dollars included in the goal calculation.
- c. Percentage availability for current or potential DBEs, calculated as described previously in Section III.
- d. “Component of the goal” calculated by multiplying the value in column (c) by column (b). This weights the availability for a category by the dollars in that category.

The values in column (d) are summed to calculate the base figure for the overall annual aspirational goal.

**Figure III-1.
Calculation of base figure for overall annual aspirational DBE goal**

	(a) FAA-funded contract dollars 2003-2007 (millions)	(b) Percent of dollars	(c) Availability (potential DBEs)	(d) Components of goal (b)*(c)
Contracts considered in the annual goal				
Construction	\$49.1	32.0 %	22.5 %	7.2 %
Engineering/professional services	77.8	50.7	15.7	7.9
Material and equipment	1.9	1.3	73.5	0.9
Other similar to above contracts	8.7	5.7	19.1	1.1
Other not similar to above contracts*	<u>15.8</u>	<u>10.3</u>	0.0	<u>0.0</u>
Total examined	\$153.4	100.0 %		17.2 %
Contracts not considered in the annual goal				
Governments, associations and not-for-profit agencies	<u>\$0.3</u>			
Total FTA-funded contracts	\$153.7			

Note: *Includes (a) purchases primarily made from outside Southern California and (b) highly-specialized local purchases such as financial services, utilities, medical services, educational services, and property purchases or leases. 0% DBE availability is used for these contracts for purposes of establishing an overall annual aspirational goal. Actual DBE availability may be greater than 0%.

Source: BBC Research & Consulting.

Types of procurements made locally that were similar to the procurements examined in the utilization and availability analyses. BBC did not specifically study each type of routine local Airport procurement made with FAA funds. Some of these types of procurements were relatively small even after BBC totaled the dollars for 2003 through 2007. Other types of procurements were larger but related to general office expenses or other routine operations.

An agency receiving FAA funds would typically still include miscellaneous local procurements in its DBE participation reports to FAA. Therefore, BBC included these contract dollars (\$8.7 million for 2003–2007) when determining the overall annual aspirational DBE goal. Availability for these contracts was based on the weighted DBE availability for the construction, engineering and material and equipment (19.1%) that BBC researched in the utilization and availability analyses.

The value in column (c) in Figure III-1 for these types of contracts is the weighted average of potential DBE availability for the types of construction, engineering and material and equipment included in the first three rows of Figure III-1.

Unique local procurements and types of procurements made from the national market. The annual goal calculation also incorporates FAA-funded contracts that were specialized procurements made from national markets and unique types of procurements made from Southern California businesses. These procurements were unlike the construction, engineering/professional services and material and equipment procurements discussed above. Sometimes, only a single vendor offered the purchased material and equipment. Such procurements were not included in BBC’s utilization and availability analyses.

Examples include purchases of trade publications, pre-packaged software, computer equipment directly from manufacturers, travel and entertainment and financial and insurance products. Payments for utilities and communications services are also included in this category of FAA-funded contracts.

Although availability was not studied for these types of procurements, they would typically have very low DBE availability.

For purposes of establishing an overall annual aspirational goal for the Authority, these contract dollars are counted in columns (a) and (b) in Figure III-1 and DBE availability is assumed to be 0 percent (column c of Figure III-1). These contract dollars were \$15.8 million for 2003–2007.

2. Types of FAA-funded contracts not included in the base figure analysis. Several types of FAA-funded contracts are not counted when calculating the base figure for the overall annual aspirational DBE goal. As government agencies, associations and not-for-profit agencies are neither DBE- nor non-DBE-owned, associated FAA-funded contracts are not included in the calculations concerning the overall annual aspirational goal.

FAA-funded contract dollars for governments, association and not-for-profit agencies are identified under “contracts not considered in the annual goal” in Figure III-1.

3. Base figure for annual aspirational DBE goal. As shown in Figure III-1, BBC’s availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs would receive 17.2 percent of prime contract and subcontract dollars for Authority FAA-funded transportation contracts if they had the same opportunities as similarly situated majority-owned firms.

The Authority should consider 17.2 percent as the base figure for its overall annual aspirational goal for DBE participation if the distribution of FAA-funded contracts for the time period covered by the goal is expected to be similar to FAA-funded contracts from 2003 through 2007.

If future FAA-funded contracts are not expected to be distributed like FAA-funded contracts from 2003 through 2007, the Authority could:

- Use the potential DBE availability information provided in Figure III-1, but apply different dollar weights to calculate the base figure; or
- Adjust the dollar weights and the availability percentages if the types of construction or any other type of work is expected to be substantially different than the construction contract types (or other types) included in 2003 through 2007. If so, the Authority would make adjustments to both column (b) and column (c) of Figure III-1.

The base figure presented in Figure III-1 is similar to the Authority’s 17 percent overall annual aspirational DBE goal for FFY 2010.

The Authority can make upward or downward adjustments to the recommended base figure before determining its final overall annual aspirational goal for DBE participation. Section VI of the report presents information the Authority might consider in choosing to make such an adjustment.

C. MBE/WBE Availability as Inputs to the Disparity Analysis

BBC also developed availability information for minority- and women-owned firms as an input to the disparity analysis. This broader availability analysis counts firms as MBEs (by race/ethnicity) and WBEs whether or not they are or could be certified as DBEs.

Figure III-2 reports dollar-weighted availability by MBE/WBE firms for Airport FAA-funded contracts for 2003-2007 (including related subcontracts). About 26 percent of combined prime and subcontract dollars on these contracts would be expected to go to MBE/WBEs. White women-owned firms (availability of 10.7%) and Hispanic American-owned firms (availability of 7.5%) account for much of this availability.

Figure III-2.
MBE/WBEs as a percentage of firms available for Authority FAA-funded transportation contracts 2003-2007, by race, ethnicity and gender

Note:
 Numbers may not add to total because of rounding.

Source:
 BBC Research & Consulting.

Race, ethnicity and gender	Percent of total
African American-owned	2.3%
Asian-Pacific American-owned	4.6
Subcontinent Asian American-owned	0.5
Hispanic American-owned	7.5
Native American-owned	<u>0.2</u>
Total MBE	15.0%
WBE (white women-owned)	<u>10.7</u>
Total MBE/WBE	25.8%

BBC separately determined dollar-weighted availability for each race/ethnic/gender group for each set of Airport contracts/subcontracts examined in the disparity analysis. A number of tables report MBE/WBE availability and disparity analysis results for Airport contracts and subcontracts in Appendix C. Overall MBE/WBE availability varies from 20 percent to more than 40 percent depending upon the types and sizes of work examined. In general:

- Dollar-weighted MBE/WBE availability is greater for small Airport prime contracts and subcontracts compared with large contract elements.
- MBE/WBE availability is greater for subcontracts than for Airport prime contracts.

The 25.8 percent availability for all MBE/WBEs for FAA-funded contracts is higher than the 17.2 percent DBE availability BBC suggests as the base figure for the Authority's overall annual aspirational goal. BBC's calculation of MBE/WBE availability counts as MBE/WBEs two groups of minority- and women-owned firms not counted as potential DBEs in the base figure: (a) businesses that have grown to be too large for the Federal DBE Program, and (b) firms that are currently not DBE certified and are likely to be too large to meet certification requirements.

D. Further Discussion of Issues in an Availability Analysis

The balance of Section III further discusses:

1. BBC's definitions of MBE/WBEs, DBEs and potential DBEs, where and why each definition was used and BBC's coding of minority women-owned firms;
2. Other approaches to availability analysis considered by the study team;
3. Relative strengths of the enhanced "custom census" availability approach; and
4. How BBC integrated results of availability interviews completed in the 2007 Caltrans study, the telephone interviews conducted for the Southern California Regional Disparity Study in 2008/2009 and the additional interviews conducted for the Airport in 2008 and 2009.

1. Definitions. BBC's discussion of terms and definitions used in the availability analysis pertains to the difference between minority- and women-owned firms and certified DBEs and how BBC coded firms owned by minority women.

MBE/WBEs, DBEs and potential DBEs. BBC's availability analysis includes the following definitions:

- "Minority- and women-owned firms" (MBE/WBEs) are firms that are owned and controlled by minorities or women, whether or not they are certified as disadvantaged business enterprises or as MBE/WBEs. BBC follows the definitions of specific minority groups contained in 49 CFR Part 26. Most minority- and women-owned firms doing business in Southern California are not currently certified.¹ The disparity analysis examines MBEs (by race/ethnicity) and WBEs as explained further below.
- Businesses that are certified as disadvantaged business enterprises ("DBEs") are referred to as such (which means that they are certified as being below revenue and personal net worth limits included in 49 CFR Part 26). Because implementation of the Federal DBE Program requires tracking of DBE utilization, BBC reports certain utilization data based on DBE status of the firm.
- Minority- and women-owned firms that are certified or appear that they potentially could be certified as DBEs are referred to as potential DBEs for purposes of establishing a base figure for the overall annual aspirational DBE goal. Figure III-3 provides additional information on the firms included as potential DBEs.

¹ Of the 769 MBE/WBE firms included in the availability database, 193, or about 25 percent, had DBE certification.

**Figure III-3.
Definitions of potential DBEs**

To formulate the overall annual DBE goal, BBC excluded firms that recently graduated from the DBE Program as well as high-revenue minority- and women-owned firms that are not currently DBE certified. Firms that appeared that they could be potentially certified as DBEs based on ownership and revenue were counted in the overall goal. Construction-related firms with annual revenue of less than \$10 million and engineering-related firms with annual revenue of less than \$5 million were counted as potential DBEs.

These revenue limits are below what USDOT sets as an overall limit (\$22,410,000 according to USDOT guidelines as of April 3, 2009) because of lower Small Business Administration size limits for certain disciplines, the revenue size categories in the availability interviews, available D&B size categories and to account for the fact that owners of very high-revenue firms are more likely to exceed the personal net worth limit of \$750,000.

Analysis of MBE/WBEs, and not just currently-certified DBEs, when examining the base figure for the overall annual aspirational DBE goal. The Authority must set an overall annual aspirational goal for DBE utilization, but many firms that could be certified as DBEs are not currently certified. Consistent with court-reviewed availability analysis in states such as Illinois and Minnesota, BBC analyzes the base figure for the overall DBE goal based primarily on relative availability of minority- and women-owned firms that are potential DBEs, not just those that are currently certified.

Although USDOT allows local agencies to develop overall annual aspirational goals for DBE participation by counting the number of available firms in DBE directories and dividing by total firms available in the local marketplace, its “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program” identifies the concern that a DBE directory may undercount potential DBEs in a local market area.² USDOT recommends that local agencies consider going beyond the directory of certified DBEs to include minority-

and women-owned firms that may be available for agency contracting. Tips for Goal-Setting states that firms potentially certified as DBEs be included in the base figure analysis (see Section II of Tips for Goal-Setting). BBC’s approach to setting the base figure is also consistent with methods approved in *Sherbrooke Turf*³ and in *Northern Contracting*, which favorably refers to and cites Tips for Goal-Setting.⁴ (See Appendix A of this report for a discussion of these and other cases.)

When considering minority- and women-owned firms that are not currently DBE certified in the base figure for the overall annual aspirational goal, BBC excludes firms that have grown to be too large for the DBE Program or otherwise been denied DBE certification. BBC also excludes MBEs and WBEs with revenue that would place them near the revenue ceiling for DBE certification. These steps are consistent with USDOT’s instructions in Part G of Tips for Goals Setting.

Disparity analysis for MBE/WBEs, not DBEs. Analysis of utilization and availability of minority- and women-owned firms (by race/ethnicity/gender) allows one to analyze whether or not there are disparities affecting minority- and women-owned firms. In other words, the possibility that race or gender discrimination affects utilization of firms is analyzed by comparing outcomes for firms based on the race/ethnicity/gender of their ownership, not certification status. Firms may be discriminated against because of the race or gender of the business owner regardless of whether that owner has applied for DBE certification.

² USDOT Tips for Goals Setting in the Disadvantaged Business Enterprise Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

³ *Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

⁴ *Northern Contracting, Inc. v. Illinois*, 473 F.3d 715 (7th Cir. 2007) at 723.

Furthermore, analysis of whether or not firms face disadvantages based on the race/ethnicity/gender of the firm owner counts the most successful, highest-revenue minority- and women-owned firms in the statistics for all minority- and women-owned firms. A disparity analysis focusing on DBEs would improperly compare outcomes for certified DBEs (by definition, “economically disadvantaged” minority- and women-owned firms) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women). One might find disparities for any group of firms for which membership is limited to low-revenue firms.⁵

Finally, 49 CFR Part 26 allows certification of white male-owned firms as DBEs. Disparity analysis based on DBEs is not purely an analysis of disparities by race/ethnicity and gender.

Coding of minority women-owned firms. In the disparity study, BBC combines firms owned by minority women and firms owned by minority men into “minority-owned firms.” “WBEs” are firms owned by white women. BBC’s rationale is discussed in Figure III-4.

**Figure III-4.
Coding of firms owned by minority women**

Firms owned by minority women present a challenge in coding for purposes of both the availability analysis and the utilization analysis. BBC considered four options for coding and analysis of firms owned by minority women:

- a. Coding these firms as both minority- and women-owned;
- b. Creating a unique group of minority female-owned firms;
- c. Grouping minority female-owned firms with all women-owned firms; and
- d. Grouping minority female-owned firms with the relevant race/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each race/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis because some minority groups had utilization and availability so low even when combining men and women that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former —to group African American women-owned firms with all African American-owned firms, etc. “WBE” in this report refers to white women-owned firms. Evidence of discrimination against white women-owned firms should be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives the Authority information to answer questions that often arise pertaining to utilization of white women-owned firms such as whether a disproportionate share of work goes to firms owned by white women.

⁵ An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the statistics for minorities, any comparison of wages between minorities and non-minorities would likely show disparities in wage levels.

2. Other approaches to availability that the study team considered. BBC explored other approaches to developing a database of firms available for Airport contracts before deciding to use information collected through interviews of local businesses. For example, the Authority collects some information on potential bidders, but these data do not provide all of the information BBC uses to analyze firm characteristics in the availability analysis.

3. Strengths of BBC’s enhanced “custom census” approach. Some of the relative strengths of a custom census approach as used in the Authority’s disparity study are summarized in Figure III-5. How BBC examined specific factors in determining whether or not a firm was available for a specific contract element is further discussed below.

Specialization of work. The USDOT suggests considering the availability of firms based on their ability to perform specific types of work. The example USDOT gives in Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program is as follows: If 90 percent of an agency’s contracting dollars is spent on heavy construction and 10 percent on trucking, the agency would calculate the percentage of heavy construction firms that are MBEs or WBEs and the percentage of trucking firms that are MBEs or WBEs, and weight the first figure by 90 percent and the second figure by 10 percent when calculating overall MBE/WBE availability.⁶ BBC examines 29 different areas of specialization (“procurement areas” or “subindustries”) in the Authority disparity study.

Qualifications and interest in prime contractor and subcontractor work. Although not a requirement in the Federal DBE Program (and not done by the Illinois Department of Transportation in the information reviewed by the Seventh Circuit in *Northern Contracting*), BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* and as a *subcontractor*. In BBC’s availability analysis, only firms qualified and interested in prime contracts are counted as available for prime contracts. Firms reporting qualifications and interest in subcontracts are counted as available for these contract components. Some firms reported qualifications and interest in both contract roles, and are counted as available for either role.

Size of contract or subcontract element. In counting available firms, BBC also considered whether a firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element. BBC’s approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).⁷

**Figure III-5.
Strengths of a “custom census”
approach**

Federal courts have reviewed and upheld “custom census” approaches to availability that begin with D&B data. The study team’s methodology for analyzing MBE/WBE availability took the previous court-reviewed custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation contracting work.

For example, the BBC analysis includes discussions with individual firms about interest in local government work, contract role and geographic location of their work, items not included in the court-reviewed availability analyses. BBC also analyzes the sizes of contracts and subcontracts that firms have performed or bid on in the past.

⁶ Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, <http://osdbu.dot.gov/?TabId=133>.

⁷ *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

Contract date. To be counted as available for a contract element, a firm must have been in business during or prior to the year in which the contract began. When interviewees could not recall or did not report an establishment date and other data on firm establishment date were not available, the firm was counted as having been established prior to the 2003-2007 study period.

4. Integration of Caltrans and Southern California Regional Disparity Study telephone interviews. In the Caltrans, Southern California Regional Disparity Study and the Airport availability analyses, BBC obtained all D&B listings for business establishments identified under the eight-digit industry codes maintained by D&B that the study team determined to be most pertinent to the procurement areas included in the disparity analysis.

In the Caltrans study, subindustries pertained to the types of FHWA- and state-funded transportation construction and engineering contracts awarded by Caltrans or local agencies using FHWA or state funds.

- Some of the procurement areas selected for the Southern California Regional Disparity Study and Airport study are the same procurement areas included in the Caltrans study. Therefore, BBC included a subset of firms interviewed in the Caltrans study as available for certain types of Airport work. Only firms with locations in Southern California that performed work in the San Diego area, reported that they had performed or bid on work for local governments (and were interested in future local government work), and met other detailed criteria were included in the pool of firms considered potentially available for Airport contracts.
- For the subindustries included in the Caltrans analysis, BBC identified newly-established businesses in Southern California since the time of the Caltrans study. These new establishments include firms located outside Southern California that opened offices in Southern California since the time of BBC's availability analysis for Caltrans.

A number of procurement areas examined in the Southern California Regional Disparity Study and the Airport study were not included in the Caltrans study. For these procurement areas:

- BBC identified the eight-digit subindustry codes most pertinent to USDOT-funded contracts and subcontracts.
- BBC obtained a list of firms from D&B that had locations in Southern California.

The study team conducted these telephone interviews in late 2008 and early 2009.⁸

⁸ BBC also sent interview forms via fax and e-mail to firms that requested either type of communication.