

SECTION VI.

Summary

SDCRAA must implement a Federal DBE Program to receive USDOT funds. Recent legal decisions and guidance from USDOT have led the Authority to reexamine how it implements the Program. This summary presents the following information to assist the Authority in making decisions concerning compliance with the Federal DBE Program:

- A. Setting an overall annual aspirational goal for DBE participation in FAA-funded contracts;
- B. Determining achievement of the annual aspirational goal through neutral means;
- C. Identifying specific measures that the Authority could use in implementing the Federal DBE Program; and
- D. Considering initiatives applicable to its locally-funded contracts (contracts for which the Federal DBE Program does not apply).

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

As presented in Section III, BBC's availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs should receive 17.2 percent of prime contract and subcontract dollars for the Airport's FAA-funded contracts based on their relative availability for that work. That availability figure has important implications for the Authority's DBE program:

- SDCRAA should consider 17.2 percent as the base figure for its overall annual aspirational goal for DBE participation if the types of FAA-funded contracts for the time periods covered by future goals will be similar to FAA-funded contracts from 2003 through 2007.
- The 17.2 percent base figure falls at the higher end of the range of past SDCRAA goals during the study period (ranging from 9-17%). SDCRAA only included certified DBEs in its calculations. In contrast, BBC also counted minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified in the base figure.¹

SDCRAA can make upward or downward adjustments to the recommended base figure as it determines its final overall annual aspirational goal for DBE participation, as discussed on the following page.

¹ Consistent with USDOT guidance, as discussed in Section III.

The Federal DBE Program outlines factors that recipients of USDOT funds must consider when assessing whether to make a “step 2” adjustment to the base figure²:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Quantitative and qualitative data related to employment, self-employment, education, training and union apprenticeship programs as well as local marketplace conditions for minorities and women;
3. Quantitative and qualitative information related to the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant data.

BBC completed an analysis of each of the above factors and was able to quantify certain factors and their impact on the base figure. BBC also examined other information that would not directly lead to a specific numerical adjustment to the base figure, but is still relevant in assessing whether or not to make a step 2 adjustment.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. BBC analyzed the Authority’s utilization of certified DBEs for the Airport’s FAA-funded contracts. Figure VI-1 describes how BBC estimated overall DBE utilization, combining different groups of FAA-funded contracts from 2003 through 2007. Most of the dollars of FAA-funded contracts applicable in the current analysis were directly studied in the disparity analysis. BBC developed estimates of DBE utilization for two smaller sets of FAA-funded contracts:

- As presented in Figure VI-1, DBEs obtained 3.3 percent of the \$128.8 million of FAA-funded contract dollars that BBC examined in the disparity analysis. However, some SDCRAA contracts were very different from the FAA-funded contracts examined in the disparity analysis (e.g., types of procurements primarily made from national markets). BBC assumed no DBE participation for the \$15.8 million of those contracts.
- There was \$8.7 million in a variety of construction, engineering and material and equipment contracts not included in BBC’s disparity analysis that were similar to contracts in the disparity analysis.³ For purposes of calculating overall DBE utilization, BBC used DBE participation that the study team determined for the \$129 million of disparity analysis contracts (3.3%) as a representative figure for DBE utilization for the \$8.7 million of similar contracts not included in the disparity analysis.

² 49 CFR Section 26.45

³ In many instances, the total dollars of these highly varied types of contracts were too small to warrant inclusion in the disparity analysis.

Based on the foregoing analysis, DBE utilization was approximately 3.0 percent of the \$153.4 million of SDCRAA 2003–2007 FAA-funded contracts shown in Figure VI-1. SDCRAA could consider this information in assessing whether or how to make any step 2 adjustments to the base figure.⁴

**Figure VI-1.
Estimated DBE participation on FAA-funded contracts, 2003-2007**

	(a) DBE utilization on FAA-funded contracts 2003-2007 (millions)	(b) FAA-funded contract dollars 2003-2007 (millions)	(c) DBE utilization (a/b) (%)
Contracts considered in the annual goal			
Examined in the study	\$4.3	\$128.8	3.3%
Other similar to above contracts*	0.3	8.7	3.3%
Other not similar to above contracts**	<u>0.0</u>	<u>15.8</u>	0.0%
Total examined	\$4.6	\$153.4	3.0%
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: * DBE utilization not directly studied. Level of DBE participation assumed to equal contracts examined in the study.

** 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 utilization is assumed for these contracts.

Source: BBC Research & Consulting.

2. Quantitative and qualitative data related to employment, self-employment, education, training and union apprenticeship programs as well as local marketplace conditions for minorities and women. BBC’s analysis suggests that there are certain barriers affecting entry of minorities and women into the Southern California construction and engineering industries. These barriers begin with education and continue through occupational advancement and business ownership.

Quantitative information on education, employment and advancement. Appendix D contains a detailed analysis of education, employment and advancement in the Southern California construction and engineering industries. The results indicated that:

- African Americans were 3 percent and Hispanic Americans were 10 percent of civil, environmental and geological engineers in Southern California in 2007. Disparities in educational attainment appear to affect entry into these fields.
- Considering the representation of women among college graduates in Southern California, relatively few women were civil, environmental or geological engineers (14.6% in 2007).

⁴ SDCRAA should also review more recent DBE participation reports to FAA. Note that the contracts included in SDCRAA DBE participation reports may differ from the contracts that BBC included in its analysis and how DBE participation on these contracts is counted.

- Representation of African Americans and Asian-Pacific Americans in the construction industry was relatively low, even when only considering entry-level jobs. Moreover, the percentage of construction workers who are African American declined from 2000 to 2007 in both San Diego and Southern California.
 - In San Diego County, African Americans were 5 percent of all workers in 2007 but only 2 percent of construction workers.
 - Asian-Pacific Americans were 3 percent of the construction workforce and 11 percent of all workers in San Diego County in 2007 (similar to all of Southern California). The fact that Asian-Pacific Americans are more likely to go to college than other groups may explain part of this difference.
 - Relative under-representation of Subcontinent Asian Americans in the construction industry is evident in 2000 and 2007 in both San Diego County and all of Southern California.
 - Hispanic Americans were 40 percent of San Diego area construction employees in 2007. High representation of Latinos in the local construction industry does not fully explain disparities in construction employment for African Americans and Asian-Pacific Americans.

- Representation of women in construction as a whole was relatively low (13 percent in the San Diego area in 2007). In many Southern California construction trades, only one or two of every 100 workers were women.

- There were disparities in the advancement of Hispanic Americans to certain construction occupations.

- Relatively few African Americans, Hispanic Americans and women working in the Southern California construction industry were managers.

These local patterns of disparities are generally consistent with the United States as a whole.

Quantitative information on self-employment. Through regression models, BBC investigated whether race/ethnicity and gender influenced rates of business ownership among employees in Southern California after accounting for the effects of neutral factors.⁵ Appendix E provides detailed results of the regression models. The results showed:

- Statistically significant disparities in construction business ownership rates for African Americans, Subcontinent Asian Americans, Hispanic Americans and women in 2000.
- Statistically significant disparities for Asian-Pacific Americans and women in the engineering industry in 2000.

⁵ BBC examined U.S. Census data on business ownership rates using methods similar to analyses examined in the court cases involving state departments of transportation in Illinois and Minnesota. At the time of this report, the most extensive data on business ownership come from the 2000 Census. The analyses of these data provide the highest level of accuracy and detail and are the focus of this summary.

“But for” calculations. Figure VI-2 quantifies the impact on the base figure if the groups for which the study team found statistically significant disparities in business ownership actually owned businesses at the same rates as similarly situated non-minorities (“but for” calculations). Figure VI-2 includes the same categories of contracts used when calculating the base figure in Section III (i.e., construction, engineering and material and equipment). BBC made the calculations in the following way:

- BBC made separate “but for” calculations for construction and engineering, and then weighted them based on SDCRAA’s dollars of FAA-funded contracts for those types of procurements. BBC did not make “but for” calculations adjustment for material and equipment firms because the study team did not develop regression models for business ownership for those types of procurements.
- Within construction and engineering, BBC calculated potential base figure adjustments only for those firms for which regression analyses showed statistically significant disparities in business ownership. Thus, for construction, BBC calculated potential availability adjustments for African Americans, Subcontinent Asian Americans and Hispanic Americans as well as white women. For engineering, BBC calculated potential adjustments for Asian-Pacific Americans and white women.

The columns of Figure VI-2 represent the following:

- a. **Current availability.** Column (a) shows the current availability for each group within each procurement area as presented in Section III.
- b. **Disparity indices for business ownership.** Column (b) presents statistically significant disparity indices in business ownership for the different race/ethnic/gender groups. See Appendix G for an explanation of the regression models that BBC used to examine those disparities.
- c. **Availability after initial adjustment.** Column (c) presents initial availability estimates after adjusting for statistically significant disparities in business ownership. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. **Availability after scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the estimates equal 100 percent. BBC rescaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) and multiplying by 100. (e.g., for African Americans, $[3.7\% / 113.2\%] \times 100 = 3.3\%$).
- e. **Components of goal.** Column (e) shows the component of the total goal attributed to the adjusted MBE/WBE availability in each procurement area. BBC calculated each component by taking the total DBE availability estimate shown under “Total minority and female” in column (d) and multiplying it by the proportion of total FAA-funded contract dollars that each procurement area represented (not shown in Figure VI-2). For example, 32.0 percent of Airport FAA-funded contract dollars were construction contracts. The study team took the 31.5 percent shown under “Total minority and female” in column (d) for construction and multiplied it by 0.32 for a result of 10.09 percent. The values in column (e) were then summed to equal total adjusted DBE availability (last row of Figure VI-2) — 23.44 percent.

In sum, the potential step 2 adjustment indicates an annual aspirational goal of 23.44 percent (rounded to the nearest tenth of a percent).

**Figure VI-2.
Potential adjustment to base figure for overall annual aspirational DBE goal**

Business ownership	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of goal**
Construction					
African Americans	2.6 %	71	3.7 %	3.3 %	
Subcontinent Asian Americans	0.1	50	0.1	0.1	
Hispanic Americans	7.7	64	12.0	10.6	
White women	10.3	57	18.0	15.9	
Asian-Pacific Americans and Native Americans	<u>1.8</u>	no adjustment	<u>1.8</u>	<u>1.6</u>	
Total minority and female	22.5 %		35.7 %	31.5 %	10.09%
Majority	<u>77.5</u>		<u>77.5</u>	<u>68.5</u>	
Total firms	100.0 %		113.2 %	100.0 %	
Engineering					
Asian-Pacific Americans	1.6 %	66	2.4 %	2.2 %	
White women	9.6	58	16.6	15.4	
Other minority groups	<u>4.5</u>	no adjustment	<u>4.5</u>	<u>4.2</u>	
Total minority and female	15.7 %		23.4 %	21.7 %	11.03%
Majority	<u>84.3</u>		<u>84.3</u>	<u>78.3</u>	
Total firms	100.0 %		107.8 %	100.0 %	
Goods and services					
Total minority and female	73.5 %	no adjustment	73.5 %	73.5 %	0.93%
Majority	<u>26.5</u>		<u>26.5</u>	<u>26.5</u>	
Total firms	100.0 %		100.0 %	100.0 %	
Other similar to above contracts					
Total minority and female	19.1 %	proportional	26.2 %	24.4 %	1.39%
Majority	<u>80.9</u>	adjustment	<u>80.9</u>	<u>75.6</u>	
Total firms	100.0 %		107.1 %	100.0 %	
Other not similar to above contracts					
Total minority and female	0.0 %	no adjustment	0.0 %	0.0 %	0.00%
Majority	<u>100.0</u>		<u>100.0</u>	<u>100.0</u>	
Total firms	100.0 %		100.0 %	100.0 %	
Total minority and female after adjustments and weighting					23.44%

Note: * Initial adjustment is calculated as current availability divided by the disparity index, which is then multiplied by 100.

** Components of goal equals availability after scaling to 100% multiplied by percentage of total FAA-funded contract dollars in that category (construction is 32.0%, engineering is 50.7%, material and equipment is 1.3 %, other similar to above contracts is 5.7% and other not similar to above contracts is 10.3%).

Source: BBC Research & Consulting.

Qualitative information. The study team also collected and analyzed qualitative information concerning conditions in the local transportation contracting industry. The following provides examples from the in-depth analysis contained in Appendix J.

A number of interviewees reported a discriminatory work environment for minorities and women in Southern California:

- Some interviewees reported that they were made to feel unwelcome in the local industry. For example, one interviewee, representing a white woman-owned firm reported that she started her own construction firm because the firm that she worked for previously made clear to her its stance that “a woman should [not] be in management.”
- Other interviewees reported instances of racial slurs, sexist comments and sexual harassment, race-related graffiti on work sites, and other incidents affecting women and minorities. For example, an interviewee representing a white male-owned firm stated that he is aware of rampant, race-related graffiti being present on some of his work sites. He referred to the construction industry as a “jungle environment.” There were also examples indicating that some non-minorities and men did not want to work with minorities or women or would not respect a minority or woman in a supervisory position.
- Some interviewees reported that their race or gender has prevented them from being a part of industry-related groups such as unions and trade associations. For example, an interviewee representing an African American male-owned firm indicated that his race prevented him from joining a local construction union: “Until 2002, black contractors could not get into the San Diego union.” He continued, “I tried to get into the union. I paid about \$12 per month to stay on the list for about two years before I went into business. I was never accepted.”
- Other minority and female interviewees as well as some white men indicated that there was probably discrimination but could not identify specific examples.

Some business owners reported that they have not experienced specific, recent instances of discriminatory behavior in the local industry:

- Some interviewees described experiences of discriminatory behavior that occurred in the past that they no longer saw today. For example, an interviewee representing a Hispanic American male-owned firm said that when his father started the firm 30 years ago he experienced discrimination. He went on to say that there are such a large number of Hispanic Americans in the industry today that discriminating against them would be akin to discriminating against the entire industry — it would be too impractical.
- Other interviewees reported that society has overcome discrimination based on race and gender, leading to increased opportunity for MBE/WBE firms. For example, an interviewee representing a local trade association indicated that racism and sexism are not as problematic as they were in the past. With regard to racism, she said, “We’ve come a long way.” With regard to sexism, she commented, “Twenty years ago ... there was a different pay scale [for men and women], but I believe those days are gone.”

3. Quantitative and qualitative information related to the ability of DBEs to get financing, bonding and insurance. BBC collected and analyzed both quantitative and qualitative information concerning access to capital. The study team also examined information about bonding and insurance.

Quantitative information. BBC's analysis of available data indicated that minority-owned firms are more likely to experience problems accessing capital than non-Hispanic white-owned firms. For a detailed discussion of those results, see Appendix F.

Some of the data that BBC analyzed related to home ownership and home mortgages:

- Relative to non-Hispanic whites, fewer African Americans and Hispanic Americans in San Diego County and Southern California owned homes in 2007, and those who did own homes tended to have lower home values. Home equity is an important source of capital for business start-up and growth.
- African Americans, Asian Americans, Hispanic Americans and Native Americans applying for home mortgages were more likely than non-Hispanic whites to have their applications denied.
- African American, Hispanic American and Native American mortgage borrowers were more likely to have subprime loans.

Other evidence pertained to business loans:

- Although business loan denial rates may have narrowed between minority- and non-minority-owned firms in the Pacific region, one recent study found that African American-, Asian American- and Hispanic American-owned businesses had higher denial rates when applying for business loans after controlling for other factors.⁶ Even when they received loans, African American- and Hispanic American-owned firms paid higher interest rates, after controlling for other factors.
- Relatively more African American- and Hispanic American-owned firms that needed credit did not apply for loans because they feared being denied the loan.

Qualitative information. In the in-depth interviews with a variety of business owners and trade association leaders, many representatives of small business owners indicated that financing, bonding and insurance are barriers to doing business in both the private and public sectors:

- Most interviewees indicated that financing is a barrier for all small businesses, regardless of race or gender. For example, one interviewee, representing an Asian American male-owned firm, explained that credit is extremely tight in the current market and particularly so for small firms that are not well established. Regarding credit for small firms, he asked rhetorically, "If I am a bank, would I loan money to [someone] with no experience?"

⁶ CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization." *Prepared for Santa Clara Valley Transportation Authority.*

- Other interviewees reported that issues related to financing, bonding and insurance disproportionately affect minority- and woman-owned firms. For example, an interviewee representing a female-owned construction business stated, “I think minorities and women have a much harder time getting capital, getting bonding and getting insurance ... women are still asked to have their husbands sign at the bank, which floors me after 33 years [in business].”
- Some interviewees indicated that financing and bonding was a particular problem for minorities and women in the past but that access had improved, sometimes through government programs. For example, an interviewee representing an African American male-owned firm stated that his race affected his firm’s ability to get financing and bonding “a long time ago,” but that now it has “opened up” so that he does not have any problems. He feels that the change occurred gradually over time.
- Some interviewees reported that bonding and insurance requirements in the public sector dissuade firms from pursuing public sector work — at least as prime contractors. For example, an interviewee representing a white male-owned firm stated that all public sector work requires bonds — contractors cannot work on Authority projects without obtaining a significant bond. He went on to say that if prime contractors do not carry MBE/WBE subcontractors under their bonds, it becomes a major issue for those subcontractors.
- A few interviewees reported that there are no barriers in the local industry associated with financing, bonding or insurance:
- Some interviewees said that obtaining a loan is an easy process if firms have their financials in order, regardless of race, gender or firm size. For example, an interviewee representing a white male-owned firm indicated that obtaining a loan is relatively easy, regardless of race, ethnicity, or gender.
- A few minority and women interviewees reported that their MBE/WBE status helped them obtain loans or qualify for bonds. For example, one interviewee, representing a Hispanic male-owned firm, stated that his firm “wouldn’t have been able to get credit at all without the DBE program.” He also noted that sometimes a prime contractor will waive a bonding requirement for his firm because it is a small DBE firm.

4. Other relevant data. The Federal DBE Program suggests that federal aid recipients examine “other factors” as well when determining whether or not to make a step 2 adjustment to the base figure.⁷ One factor BBC examined was the relative success of minority- and women-owned firms in the local transportation contracting industry. Examples of quantitative and qualitative information that the study team examined in the disparity study are provided below.

Quantitative information. Analyses of different U.S. Census data included the following results:

- Data from the 2002 Survey of Business Owners (SBO) indicate that annual receipts were lower for African American-, Asian American-, Hispanic American-, Native American- and women-owned firms compared with all firms in Southern California (for all industries combined). There were disparities for African American-, Asian American-, Hispanic American and Native American-owned construction firms compared with majority-owned firms in California (SBO construction industry-specific data are not published for Southern California). There were no disparities for female-owned construction firms for the state.
- Regression analyses using 2000 U.S. Bureau of the Census data for Southern California show statistically significant disparities in business earnings for Hispanic American and female business owners in the construction industry.⁸ The regression analysis suggested the possibility of disparities for African American, Asian-Pacific American and Native American business owners, but those results were not statistically significant (perhaps due to small sample sizes in some cases).
- Regression analyses for Southern California engineering business owners indicated evidence of disparities for female business owners. Earnings of Native American business owners exceeded non-Hispanic whites after controlling for other factors.

Revenue data collected as part of BBC’s availability interviews with transportation contracting firms in Southern California indicated the following disparities:

- **Construction.** Lower annual revenue for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned construction firms.
- **Engineering and related businesses.** Lower annual revenue for African American, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned engineering and related firms.
- **Material and equipment.** Lower annual revenue for minority- and women-owned material and equipment firms compared with majority-owned firms.

⁷ 49 CFR Section 26.45

⁸ Appendix I provides further detail about data sources and BBC’s analyses.

Data from the availability interviews also indicated the following concerning bidding by MBE/WBEs and majority-owned firms.

- **Bidding on public sector work.** Relatively fewer African American-, and Hispanic American-owned construction firms had bid on any part of a government contract within the previous five years based on telephone interview data. Minority- and women-owned engineering firms were also less likely to have bid on any part of a public sector contract.⁹
- **Success in pursuing public sector work.** Among construction firms that had attempted to obtain public sector work, firms owned by African Americans, Subcontinent Asian Americans, Hispanic Americans and women were less likely to have been successful in receiving a contract or subcontract than majority-owned firms. Similar disparities were found for African American- and Hispanic-owned engineering firms.
- **Bid capacity.** The study team also collected data on the largest contract or subcontract a firm had performed or bid on within the previous five years, which we refer to as “bid capacity.”¹⁰ The results indicated that MBE/WBEs were less likely than majority-owned firms to have received or bid on large contracts or subcontracts. BBC conducted regression analyses to further explore those differences and found that:
 - Firm specialization and age were important in explaining whether a firm had high bid capacity. Hispanic-owned firms were significantly less likely than other race and ethnicity groups to have an above-median bid capacity.
 - Women-owned engineering firms appeared to have higher bid capacity after controlling for other factors. There were no statistically significant disparities for minority-owned engineering firms.

Qualitative information. Many individuals believe that there are disadvantages for minority- and women-owned firms in the local marketplace that affect the success of those firms:

- Some interviewees indicated that they have experienced racial or gender stereotyping “first-hand.” Others reported hearing of such experiences for minorities and women in the local industry. For example, an interviewee representing a local trade organization said that some of the personnel at public agencies believe that MBE/WBE firms are less qualified than large, well-established firms and that their participation generates additional costs. He said that many of those people believe there are “no good MBEs out there.” He remarked, “These individuals should be open to accepting that there are, in fact, good [MBE/WBE] firms and that their utilization does not increase costs.”

⁹ BBC’s availability analysis presented in Section III accounts for differences in bidding on public sector work between MBE/WBEs and majority-owned firms.

¹⁰ Differences in bid capacity are also reflected in BBC’s availability analyses, as described in Section III.

- When asked if his firm has been discriminated against based on the owner's ethnicity, one interviewee, representing an African American male-owned firm, said: "To be honest with you, of course I have been discriminated against. [Prime contractors] will give you the contract, but in order to keep it I have to put the white person out there to be the front man." He continued, "Once they find out it is a black man behind the operation they will unfairly terminate the contract."
- Many interviewees indicated that it is more difficult for minority- and women-owned firms to "break into" the local industry because of issues related to race/ethnicity or gender. For example, an interviewee representing a female-owned firm reported that it is difficult for her firm to develop relationships with prime contractors, precisely because her firm is female-owned. She said that there have been instances when she has had to bring a male employee from her company to meetings with prime contractors so that they would treat her with more respect. She indicated that there is a general aversion to women in the construction industry.

Minority and female business owners report a variety of experiences when attempting to obtain work as subcontractors on projects:

- Some MBE/WBE interviewees reported that prime contractors using them for public sector work do not use them on private sector work.
- Some interviewees suggested that it might be difficult for a minority- or woman-owned subcontractor to "break in" with a prime contractor, but once they do so and show good work, the prime contractor will use them again. For example, one interviewee, representing a public works trade organization, said that pre-existing relationships between prime contractors and subcontractors is the most important factor in subcontractors getting work: "Some primes might have sub opportunities and [our organization] will then post the opportunity or work to get the appropriate team together. But putting together a team is mostly about relationships and trust."
- Other minority- and women-owned firms indicated that they work with the same prime contractors on both private and public sector contracts.
- A number of interviewees, including some minority and female business owners, said that there are few barriers, if any, related to race/ethnicity or gender today:
- For example, an interviewee representing a local trade association stated, "I think when the baby boom generation came in [racial discrimination] pretty well dissipated. That's me and I think the next generation won't even know what we're talking about. We're electing a black man president. You can't tell me there's a lot of prejudice deep seeded in the country when we're electing Barack Obama now."
- A number of interviewees reported barriers to success that affect small firms but none that are particular to minority- and women-owned firms. For example, an interviewee representing an African American male-owned firm commented that "the discrimination that continues today has nothing to do with race ... we got rid of the racist system, and now we've got a system of cronyism. And all of us are not cronies."

Summary of information for step 2 analysis. BBC’s in-depth analysis of each factor outlined in the Federal DBE Program suggests that the Authority should consider one of the following options concerning a step 2 adjustment.

Option 1 – making an upward adjustment at this time. Over the long-term, there are reasons that SDCRAA might consider a higher overall aspirational goal than the 17.2 percent base figure.

- If the Authority were to make an upward adjustment, it could consider the 23.5 percent figure for DBE participation after adjusting for business ownership rates (shown in Figure VI-2).
- Analyses of access to capital and other factors also support an overall annual aspirational goal higher than 17.2 percent.

Option 2 – making no step 2 adjustment. The Authority might adopt the 17.2 percent base figure for its overall 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 in the goal-setting process as long as the agency can explain its decision.

Option 3 – making a downward adjustment at this time. BBC’s estimate of overall DBE participation on FAA-funded contracts for 2003 through 2007 was about 3.6 percent. This level of participation may represent a minimum demonstration of “current capacity of DBEs to perform work,” and the Authority could conclude that a downward adjustment from the 22.2 percent base figure is warranted.¹¹

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

USDOT requires agencies to meet the maximum feasible portion of the overall annual aspirational DBE goal using race-neutral means.¹² USDOT Questions and Answers about 49 CFR Part 26 addresses how federal aid recipients project what portion of their overall annual goal they will meet through race- and gender-neutral means.¹³

¹¹ 49 CFR Section 26.45 (d)(1)(i).

¹² 49 CFR Section 26.51

¹³ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

Examples of questions recipients could ask in making this analysis include:

1. What is the participation of DBEs in the recipient's contracts that do not have contract goals?
2. There may be information about state, local or private contracting in analogous areas where contract goals are not used (e.g., in situations where a prior state/local affirmative action program was ended). What is the extent of participation of minority or women's businesses in such programs?
3. What is the extent of race-neutral efforts that the recipient will have in place for the next fiscal year?
4. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?
5. To what extent have DBE primes participated in the recipient's programs in the past?
6. To what extent has the recipient oversubscribed its DBE goals in the past?

The foregoing analyses are generally consistent with relevant court decisions including the Ninth Circuit Court of Appeals decision in *Western States Paving* and with guidance from USDOT subsequent to the *Western States Paving* decision.¹⁴

1. What is the participation of DBEs in the recipient's contracts that do not have contract goals? The Authority changed its implementation of the Federal DBE Program on January 23, 2006. The Authority no longer required bidders to meet goals or show good faith efforts on FAA-funded contracts after that date.

There were 25 FAA-funded contracts from January 23, 2006 through December 2007 within the procurement areas that BBC examined in the disparity study. Including subcontracts, BBC analyzed 43 FAA-funded contract elements during that time period.

Overall utilization of minority- and women-owned firms. Figure VI-3 shows MBE/WBE participation on FAA-funded contracts that the Authority executed before and after January 23, 2006. MBE/WBEs obtained 10 percent of the FAA-funded contract dollars for January 23, 2006 through December 2007, more than the MBE/WBE utilization for FAA-funded contracts from 2003 to January 22, 2006 when the DBE contract goals/good faith efforts program was in place (2.8%).

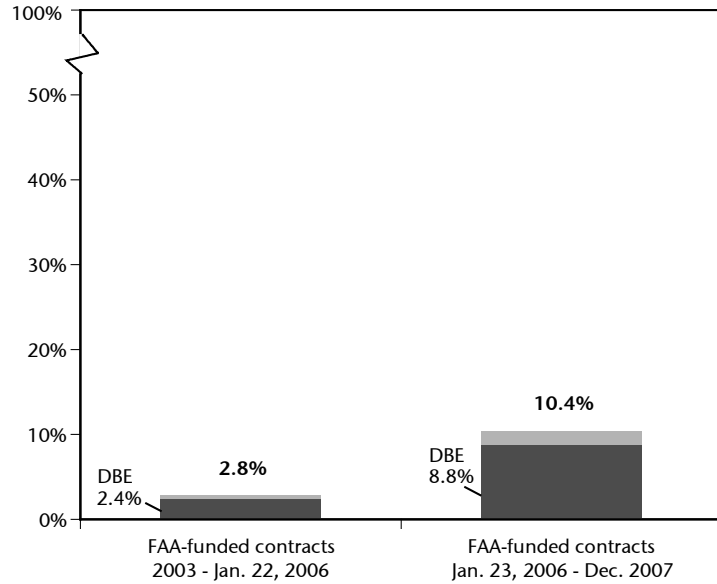
BBC also examined MBE/WBE participation as prime contractors and subcontractors on locally-funded contracts for 2003 through 2007 (SDCRAA did not apply subcontracting goals to those contracts). MBE/WBE utilization was about 18 percent, substantially above MBE/WBE utilization on FAA-funded contracts.

¹⁴ http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm.

Figure VI-3.
**MBE/WBE share of prime/
 subcontract dollars for FAA-
 funded transportation
 contracts, before and after
 January 23, 2006**

Note:
 Number of contracts/subcontracts is 280 for 2003
 – Jan. 22, 2006 and 43 for Jan. 23, 2006 – Dec.
 2007.
 For more detail and results by group see Figures
 C-2 and C-3 in Appendix C.

Source:
 BBC Research & Consulting.



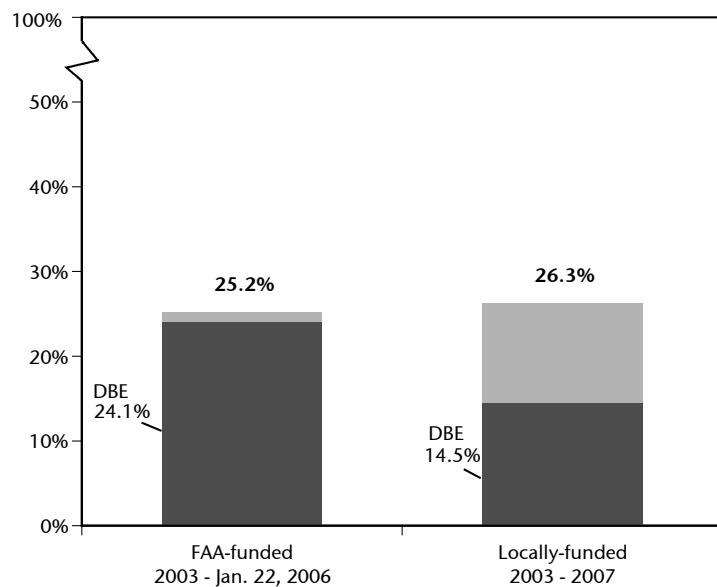
Utilization as subcontractors. The study team examined the share of subcontract dollars going to MBE/WBEs and certified DBEs on FAA-funded contracts before and after the change in implementation of the program and found no discernable differences.

Figure VI-4 compares subcontractor utilization for subcontracts on FAA-funded contracts during the DBE contract goals/good faith efforts program to locally-funded contracts for 2003 through 2007. MBE/WBE utilization was similar on locally-funded contracts and on FAA-funded contracts prior to the program change. About 25.2 percent of subcontract dollars on FAA-funded contracts went to MBE/WBEs prior to the program change compared to 26.3 percent on locally-funded contracts.

Figure VI-4.
**MBE/WBE share of subcontract
 dollars for FAA-funded
 transportation contracts,
 before January 23, 2006, and
 for locally-funded contracts,
 2003-2007**

Note:
 Number of subcontracts analyzed is 238 for the FAA-
 funded contracts, Jan. 2003-Jan 22, 2006 and 488 for
 locally-funded contracts.
 For more detail and results by group see Figures C-8
 and C-10 in Appendix C.

Source:
 BBC Research & Consulting from SDCRAA contracting
 data.



Disparity analysis. Figure VI-5 compares disparity indices for MBE/WBEs overall for FAA-funded contracts when DBE contract goals/good faith efforts were in place and for the 23 months of FAA-funded contracts after the program change. The study team found substantial underutilization of MBE/WBEs as a whole for FAA-funded contracts when SDCRAA’s DBE contract goals/good faith efforts program was in place (disparity index of 12) for all race and ethnicity groups and for WBEs.

MBE/WBE utilization for FAA-funded contracts from January 23, 2006 through December 2007 was 31 percent of what would be expected given overall MBE/WBE availability for those contracts. There continued to be substantial disparities for WBEs and African American-, Subcontinent Asian American-, Hispanic American and Native American-owned firms.

There were smaller disparities between MBE/WBE utilization and availability for subcontracts on FAA-funded contracts before and after the change in the DBE contract goals program when compared to all contracts elements.

Figure VI-5.
Disparity indices for
MBE/WBE utilization as
prime contractors/
subcontractors on FAA-
funded contracts, before
and after Jan. 23, 2006

Note:

Number of contracts/subcontracts is 280 for 2003 – Jan. 22, 2006 and 43 for Jan. 23, 2006 – Dec. 2007.

For more detail and results by group see Figures C-2 and C-3 in Appendix C.

Source:

BBC Research & Consulting.

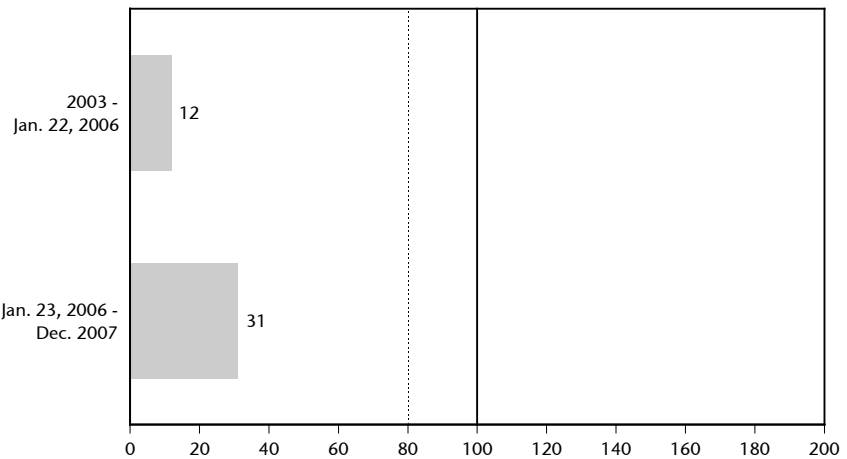


Figure VI-6 compares disparity indices for specific MBE/WBE groups for FAA-funded contracts when DBE contract goals/good faith efforts were in place (dark bar) and locally-funded contracts during 2003-2007 (lighter bar).

As discussed above, the disparity index for MBE/WBEs overall during the goals period was 12 for prime and subcontracts on FAA-funded contracts. For locally-funded contracts, MBE/WBE utilization (18%) was about one-half of what would be expected based on MBE/WBE availability for those contracts (disparity index of 54).

There were disparities for each MBE/WBE group for locally-funded contracts except for women-owned firms.

**Figure VI-6.
Disparity indices for
MBE/WBE utilization as
prime contractors and
subcontractors on FAA-
funded contracts before
Jan. 23, 2006 and on
locally-funded
transportation contracts**

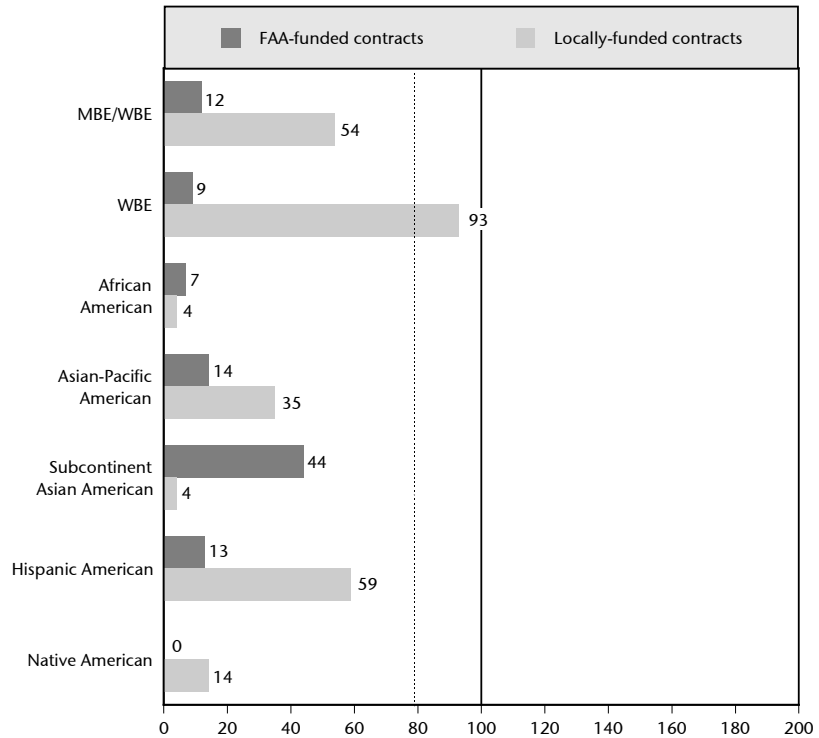
Note:

Number of contracts/subcontracts analyzed for FAA-funded contracts is 280 and 852 for locally-funded contracts.

For more detail and information by group see Figures C-2 and C-4 in Appendix C.

Source:

BBC Research & Consulting.



For locally-funded contracts, there were substantial disparities in the utilization of African American-owned firms, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

As discussed in Section IV, there are disparities for each MBE/WBE group, including women-owned firms, when utilization and availability are compared for Airport FAA- and locally-funded contracts combined.

2. What is the extent of participation of minority or women-owned businesses in similar programs without goals? The five Consortium agencies participating in the Southern California Regional Disparity Study — Los Angeles County Metropolitan Transportation Authority, Metrolink, Orange County Transportation Authority, San Diego Metropolitan Transit System and SANDAG — make purchases within the same local transportation contracting market as SDCRAA, and similar to the Airport, have operated and then discontinued DBE goals/good faith efforts programs. Figures VI-7, VI-8 and VI-9 present combined results from BBC’s studies for those agencies.¹⁵

Overall utilization of minority- and women-owned firms. Figure VI-7 shows overall utilization of minority- and women owned firms on FTA-funded contracts both before and after the Consortium used DBE goals/good faith efforts and on locally-funded contracts. Key findings included:

- Minority- and women-owned firms obtained 16.7 percent of Consortium agency FTA-funded contract dollars from 2003 through the time that agencies discontinued use of

¹⁵ As of October 2009, the five Consortium agencies have released draft reports for public comment. Final reports should be available in early 2010.

their DBE contract goals/good faith efforts programs (which varied from March/April to September 2006).

- After the change in the program, MBE/WBE utilization on FTA-funded contracts was 29.7 percent.
- MBE/WBE utilization for 2003–2007 locally-funded Consortium contracts was 15.4 percent.

Figure VI-7.
MBE/WBE share of Consortium agency prime/subcontract dollars for FTA-funded transportation contracts, before and after change in DBE contract goals, and for locally-funded contracts, 2003–2007

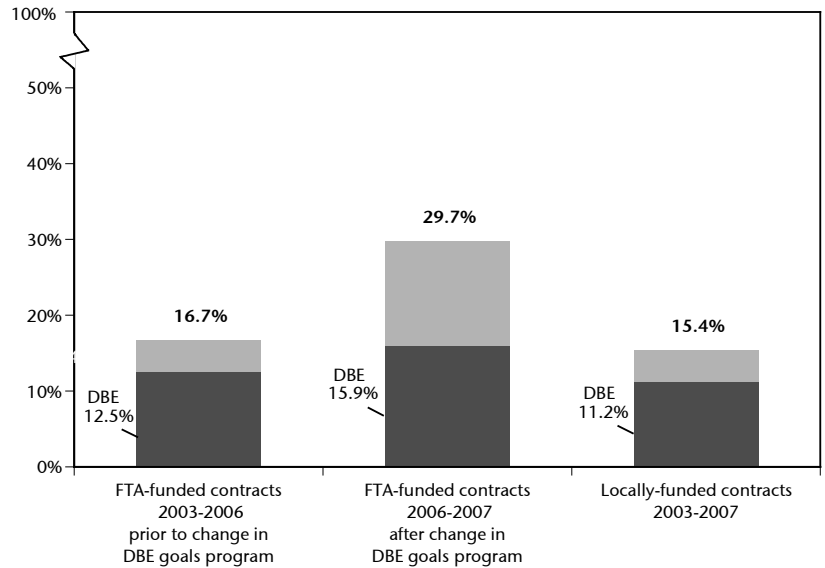
Note:

Certified DBE utilization.

Number of contracts/subcontracts analyzed is 4,088 for 2003–2006 FTA-funded contracts prior to change in DBE contract goals program, 1,290 for 2006–Dec. 2007 FTA-funded contracts after the change in program, and 2,039 for 2003-2007 locally-funded contracts.

Source:

BBC Research & Consulting from data on LACMTA, MTS, OCTA, SANDAG and SCRRA contracts.



Disparity analysis. Figure VI-8 presents disparity indices for FTA-funded contracts before and after the Consortium used DBE goals/good faith efforts. For each MBE/WBE group, the study team compared actual utilization with the level of utilization expected based on a combined availability analysis for corresponding Consortium contracts.

As illustrated in Figure VI-8, there was no disparity in Consortium utilization of MBE/WBEs overall for FTA-funded contracts during the time when the DBE contract goals/good faith efforts program was in place at each agency. However, there were disparities for WBEs and for African American- and Subcontinent Asian American-owned firms.

When examining FTA-funded contracts from the period between 2006 and 2007 — when agencies discontinued DBE contract goals/good faith efforts — there were no overall disparities for MBE/WBEs. However, Figure VI-8 shows that disparities existed for WBEs and African American- and Native American-owned firms during that time period. Utilization was also somewhat below availability for Hispanic American-owned firms (disparity index of 86).

Figure VI-8.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on Consortium FTA-funded transportation contracts before and after change in DBE contract goals/good faith efforts program, 2003–2007

Note:
 Number of contracts/subcontracts analyzed is 4,088 for 2003–2006 FTA-funded contracts prior to change in DBE contract goals program and 1,290 for 2006–Dec. 2007 FTA-funded contracts after the change in program.

Source:
 BBC Research & Consulting.

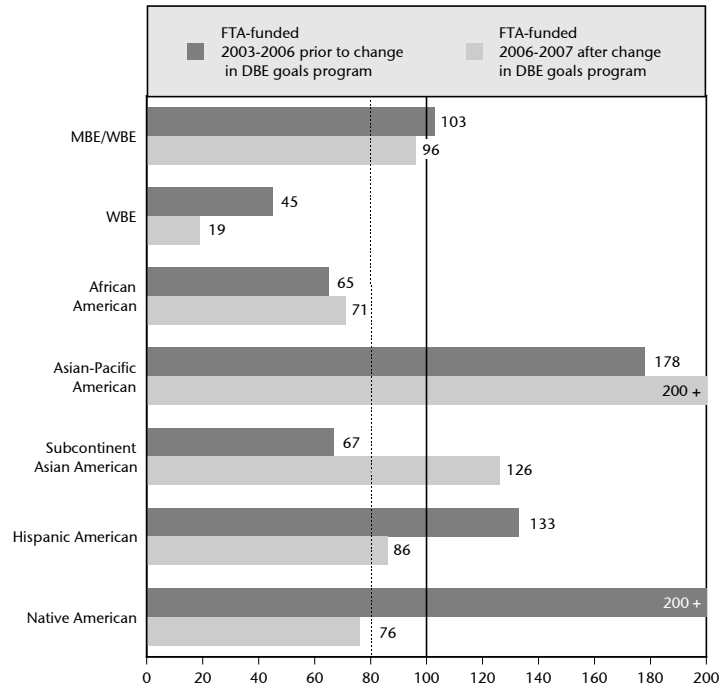
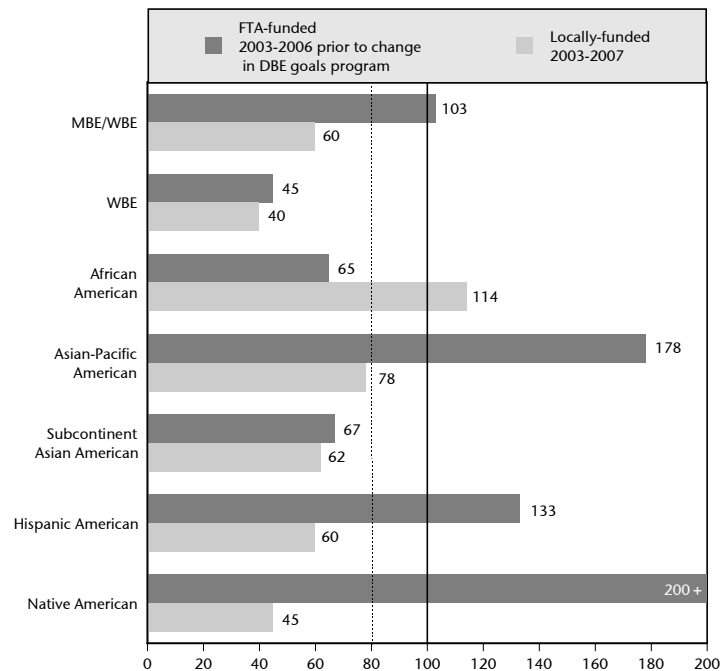


Figure VI-9 shows disparity indices for locally-funded Consortium contracts compared to FTA-funded contracts when DBE goals/good faith efforts were in place. Utilization of MBE/WBEs on locally-funded contracts was about 60 percent of what would be expected based on MBE/WBE availability, and the study team identified disparities for each MBE/WBE group except for African American-owned firms.

Figure VI-9.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on Consortium 2003–2006 FTA-funded contracts with DBE contract goals/good faith program and 2003–2007 locally-funded transportation contracts

Note:
 Number of contracts/subcontracts analyzed is 4,088 for 2003–2006 FTA-funded contracts prior to change in DBE contract goals program and 2,039 for 2003–2007 locally-funded contracts.

Source:
 BBC Research & Consulting.



3. What is the extent of race-neutral efforts that the recipient will have in place for the next fiscal year? To determine the extent to which the Authority can address disparities between MBE/WBE utilization and availability, the study team reviewed the race/gender-neutral efforts that the Authority has in place or is initiating.

The Authority has implemented a number of race- and gender-neutral remedies to improve the success of small firms seeking Airport work, including the following.

Bonding and Contract Financing Assistance Program. SDCRAA's Bonding and Contract Financing Assistance Program provides assistance to small businesses that are trying to obtain bonds or lines of credit for Airport contract work. Eligibility requirements include industry-appropriate licensing and experience in the building trades.

The program is administered by Merriwether & Williams Insurance Services, which partners with brokers, surety companies, lenders, fund administrators and financial services professionals to provide a number of different services to eligible firms.

- **Bond and financing guarantees.** The Authority offers bid, performance and payment bond guarantees (up to 40% or \$750,000) as well as loan guarantees for Airport projects (up to 50% or \$750,000).
- **Funds administration services.** The Authority sponsors seminars in funds administration and helps small firms develop relationships with third-party funds administrators and accountants.
- **One-on-one consultation and counseling.** The Authority offers one-on-one consultation with firms to discuss topics related to bonding and financing requirements, fund administration services and various forms of technical assistance.
- **Technical assistance workshops:** SDCRAA also hosts technical assistance workshops on a number of different topics, including:
 - Bonding and funds administration;
 - Business management skills;
 - How to do business with the Authority; and
 - Understanding public works projects.

Turner School of Construction Management. In conjunction with Turner Construction, SDCRAA hosts the Turner School of Construction Management. The Turner School works to improve the technical, administrative and managerial skills of small businesses to help them be successful in construction management. It is a seven-week course that meets two nights each week at the Airport. The course is free to participants. Turner has been operating the program since 1969 and has graduated more than 15,000 students. A number of firms who have attended the course have gone on to win contracts with SDCRAA.

On-line education program. The Authority is launching an on-line education program that will offer on-line courses on how to do business with the Airport. The classes will include information about how to bid on Airport work, how to fill out required forms and how to meet the Airport's security requirements.

Small Business Development. The Authority’s Small Business Development Department (SBD) works to provide small firms with information about potential contracting opportunities with the Airport. Small businesses can register with the Authority through its online vendor management system and be notified when bidding opportunities arise in their fields of work. In addition, the SBD widely advertises current bid and contract opportunities on the Airport website and hosts a number of networking and outreach events and provides small businesses with developmental services related to contract work with the Airport.

San Diego Contracting Opportunity Center. The Airport partners with and provides financial support for the San Diego Contracting Opportunity Center (SDCOC). SDCOC assists small businesses in doing business with federal, state and local government agencies at no cost to the participants. SDCOC offers a number of services, including:

- Education/training;
- One-on-one counseling and assessment; and
- Plan room use.

Public Agency Consortium. SDCRAA is part of the San Diego County Public Agency Consortium (PAC), a group of local public agencies that pool their resources to host quarterly outreach and networking events for small businesses (e.g., Operation Opportunity and Paths to Partnership). The goal of the events is to pair prime contractors with subcontractors across procurement areas as well as help develop relationships between small businesses and public agencies. In addition to the Airport, public agencies that are involved with PAC include:

- Port of San Diego;
- SANDAG;
- City of San Diego;
- Caltrans; and
- San Diego County Water Authority

Trade association memberships. The Airport has memberships with a number of local trade organizations that periodically hosts outreach and networking events to encourage small firms to participate in Airport work. Some of the trade organizations include:

- Associated General Contractors of America;
- Asian Business Association;
- Black Contractors Association; and
- National Association of Women in Construction.

In addition to race/gender-neutral measures that the Authority currently has in place, there are a number of neutral programs that other agencies administer in the local area. Figure VI-10 provides examples of those programs.

Figure VI-10.
Examples of small business assistance and other neutral programs in Southern California

Neutral remedies	Examples in the local marketplace
Technical assistance	<p>Technical assistance programs are widely available throughout Southern California and San Diego. Examples range from general assistance with organizations like the City of San Diego and the San Diego Contracting Opportunity Center to industry-specific training programs like the California Construction Contracting Program. Other programs focus on market development assistance and improved use of electronic media and technology like those offered by the Pace Business Development Center.</p>
Small business finance	<p>Small business financing is available through several local agencies within Southern California and San Diego. For example, the Pace Business Development Center in Los Angeles supports start-ups with loan package preparation and capital acquisition through financial institutions guaranteed by the SBA. The California Southern Small Business Development Corporation also offers financing assistance with the support of the State of California.</p>
Bonding programs	<p>Programs such as the SBA Bond Guarantee Program provide bid, performance and payment bond guarantees for individual contracts. The City of Los Angeles Bonding Assistance Program also offers bond guarantees as well as individual counseling and training.</p> <p>A number of different agencies provide training on how to obtain a bond including the San Diego County Water Authority and the Los Angeles Unified School district. The school district's program — BondWorks — prepares contractors to manage cash flow and taxes and provides training related to credit worthiness criteria in the bond approval process.</p>
Mentor-protégé programs	<p>The Associated General Contractors of San Diego and the City of San Diego jointly administer a mentor-protégé program in an effort to increase diversity and help new and emerging businesses develop in the construction industry.</p> <p>The SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist small firms with management, financial and technical issues. The program also helps firms explore joint ventures and subcontracting opportunities for federally-funded contracts.</p> <p>San Diego Gas & Electric along with Sempra Energy administer the Mentoring Rising Star DBE Suppliers Program. The program seeks to help promising DBE suppliers increase their capacity and competitiveness by providing business mentoring, technical assistance and by marketing them to internal clients.</p>
Networking and outreach	<p>A number of different organizations work to pair emerging subcontractors with prime contractors or to help firms find bid opportunities through networking events and subcontractor outreach programs. Some local organizations include the San Diego County Water Authority, San Diego Supplier Diversity Council, City of San Diego and the San Diego County Public Agency Consortium.</p>

In addition to the programs described in Figure VI-10, the Authority could also consider revising its current neutral programs to include measures aimed at increasing contracting opportunities for small businesses, like using minimum subcontracting requirements or employing small business set asides.

Subcontracting minimum. SDCRAA could consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program or the City of San Diego's Subcontractor Outreach Program (SCOPE):

- For each contract above a certain dollar amount, the Airport would set a percentage to be subcontracted based on analysis of the work to be performed and experience from similar contracts (different types of projects involve relatively greater or smaller amounts of subcontracting). For some contracts, the Airport could set a 0 percent MSM (or just no MSM).
- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.
- The Airport should include flexibility in the program, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

Availability of minority- and women-owned firms is relatively high for small to medium subcontracts. Moreover, a subcontracting minimum program corresponds to a neutral remedy listed in the Federal DBE Program, which suggests that agencies could promote MBE/WBE participation by “requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces”.¹⁶

Small business subcontracting program. The Authority could consider expanding its small business development program to include subcontracting goals for certified small businesses. SDCRAA might set goals and evaluate contractor compliance using the same processes provided for in the Federal DBE Program.

The Authority might consider a number of options for determining eligibility of small businesses for the program, including:

- Use of the same eligibility criteria for certification as found in the Federal DBE Program except that race/ethnicity/gender ownership would not be considered (this approach is currently used by other transportation agencies in Southern California, like LACMTA). SDCRAA could partner with other agencies in the San Diego area to certify small businesses, like SANDAG and the Metropolitan Transit System.
- Use of the same eligibility criteria as the State of California small business program, except that the Airport could not limit the program to California-based firms if the program applied to FAA-funded contracts.

¹⁶ 49 CFR Section 26.51 (b)(1).

Small business prime contractor program. The Authority might also evaluate whether its small business program could include measures to help certified small businesses obtain prime contracts. Similar to the State of California's program, the Airport could employ small business preferences for certain types of contracts. For example, in evaluating proposals for professional services contracts, the Airport might be able to include 5 evaluation points out of 100 to be awarded based on the certified small business status of a proposer.

In addition to the State of California program, the City of Los Angeles and the City of San Diego both operate small business prime contractor programs that SDCRAA should evaluate. For example, as part of its Minor Construction program, the City of San Diego earmarks construction contracts worth \$250,000 or less and only opens them to competitive bidding for certified small businesses that are registered in the program.

Review of informal pre-qualification process and other components of the procurement process for construction prime contracts. The Authority has recently begun pre-qualifying firms for construction projects that are worth \$100,000 or less (pre-qualification began after the study period). As part of the pre-qualification process, each firm is required to submit information about the type of work that it performs, level of experience, financial history and background in terms of finance and bonding. SDCRAA uses that information to assess the firm's ability to complete the work and its financial responsibility.

SDCRAA should review whether the pre-qualification process is necessary given that prime contractors are required to submit a bond and its relatively low MBE/WBE participation in contracts worth less than \$100,000. If the pre-qualification process is continued, the Airport should ensure that pre-qualification does not hinder the participation of new or small construction businesses including MBE/WBEs.

Review of sole source procurements. It may be opportune for SDCRAA to assess how frequently it uses sole source procurement methods. Four of the 35 contracts examined in detail as part of the disparity study were sole-sourced (none went to MBE/WBEs). It does not appear that the Authority has over-used sole-source contracts, but this practice should continue to be monitored for its potential effects on minority- and women-owned firms.

Segment large contracts into smaller contracts. SDCRAA should continue to evaluate when contracts can be divided into multiple smaller contracts. However, note that the disparity analysis for the Airport's contracts and subcontracts under \$100,000 (including FAA- and locally-funded contracts) showed utilization well below MBE/WBE availability for this work.

Minority- and women-owned firms that are not currently certified as DBEs. SDCRAA will need to track the effectiveness of neutral programs, including preparing utilization reports for all minority- and women-owned firms.¹⁷ The Airport should examine prime- and subcontractor utilization on both FAA- and locally-funded contracts.

¹⁷ Including MBE/WBEs that are self-identified.

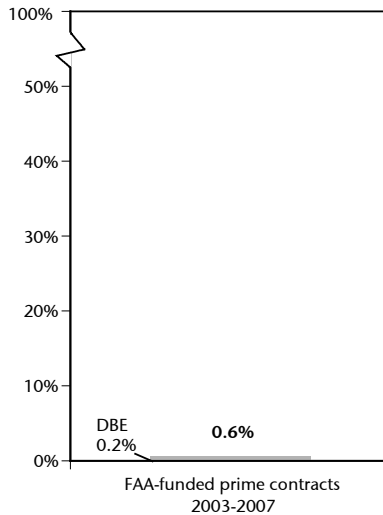
4. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means? When SDCRAA changed its implementation of the goals program, it no longer required contractors to commit to a certain amount of DBE participation.

5. To what extent have DBE primes participated in the recipient's programs in the past? MBE/WBEs accounted for less than 1 percent of prime contract dollars on FAA-funded contracts from 2003 through 2007 (see Figure VI-11). Participation of certified DBEs was also less than one percent of FAA-funded prime contract dollars.

Figure VI-11.
MBE/WBE share of prime contract dollars for FAA-funded transportation contracts, 2003–2007

Note:
 Number of contracts analyzed is 67.
 For more detail and results by group see Figures C-43 in Appendix C.

Source:
 BBC Research & Consulting from SDCRAA contracting data.

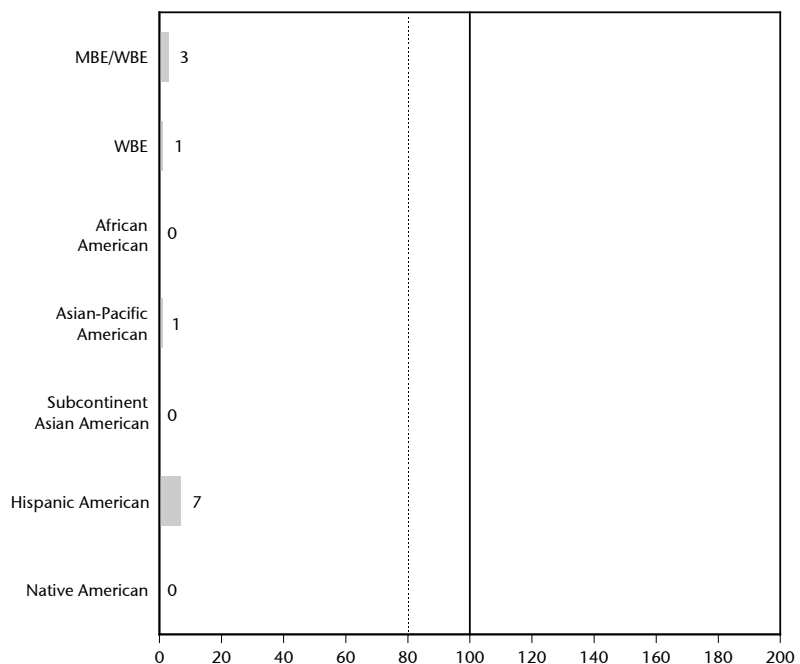


As shown in Figure VI-12, utilization of MBE/WBEs as prime contractors on FAA-funded contracts was substantially less than what would be expected based on availability for these contracts.

Figure VI-12.
Disparity indices for MBE/WBE utilization on FAA-funded prime contracts, 2003–2007

Note:
 Number of contracts analyzed is 67.
 For more detail and information see Figures C-43 in Appendix C.

Source:
 BBC Research & Consulting.



Section V of the present report examines SDCRAA's prime contract utilization in more detail.

6. To what extent has the recipient oversubscribed its DBE goals in the past? BBC examined prime- and subcontract awards for the Authority's FAA-funded contracts for the period from January 23, 2006 through December 2007. As previously shown in Figure VI-3, DBEs received 10.4 percent of contract dollars, slightly more than the 9.0 percent annual aspirational DBE goal that the Airport set for FFY 2007.

Summary. For January 23, 2006 through December 2007, there was little overall difference in SDCRAA's utilization of minority- and women-owned firms on FAA-funded contracts compared with FAA-funded contracts for 2003–January 22, 2006 when the DBE contract goals/good faith efforts program applied.

Through December 2007, the Airport's utilization of minority- and women-owned firms for locally-funded contracts (which were not subject to the SDCRAA DBE contract goals/good faith efforts program) was 54 percent of what it would be based on the availability of those firms (see Figure VI-6). Depending on the level of the overall annual aspirational goal SDCRAA adopts, it might consider meeting no less than 54 percent of its goal through neutral means. However, SDCRAA should consider meeting substantially more (or all) of its annual aspirational goal through neutral means, in accordance with 49 CFR Section 26.51, depending upon continued success of existing programs and implementation of additional neutral efforts.

C. Identifying Specific Measures that the Authority Could Use in Implementing the Federal DBE Program

The Federal DBE Program requires SDCRAA to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. In making any policy decision to engage in a remedy that targets DBEs — if it determines such a remedy is needed — the Airport should consider the information in this disparity study and additional pertinent information per 49 CFR Part 26.

1. Additional neutral efforts. A number of additional race- and gender-neutral efforts are discussed above. Initiatives that help small businesses compete for more Airport prime contracts (and total Airport contract dollars) could have the largest immediate impact on MBE/WBE participation.

2. DBE goals/good faith efforts. If, after tracking the effectiveness of neutral remedies, SDCRAA considers reinstating DBE contract goals/good faith efforts, it will want to carefully examine which groups exhibit disparities in contracts without the DBE subcontracting goals/good faith efforts program.

Guidance from the USDOT indicates that the Airport should employ future DBE contract goals in a narrowly tailored manner — eligibility should be limited to those race/ethnic/gender DBE groups for which disparities exist.¹⁸ One approach would be for SDCRAA to limit eligibility for meeting DBE contract goals to race/ethnic/gender groups for which there were substantial disparities considering overall FAA-funded prime contract and subcontract dollars when the goals/good faith efforts program was not in place. Based on the information in this report, each race/ethnic/gender group in the Federal DBE Program would be included. They are:

- Women-owned firms;
- African American-owned firms;
- Asian-Pacific American-owned firms;
- Subcontinent Asian American-owned firms;
- Hispanic American-owned firms; and
- Native American-owned firms.

It is important to note that majority-owned firms would still participate in Airport contracting in all other ways (for example, meeting a subcontracting minimum or potentially participating in a small business prime contractor program). White male owned firms meeting certification criteria could still apply for DBE certification, and if approved, would participate on the same basis as minority- and women-owned DBEs in any Authority programs limited to DBEs. SDCRAA would include all MBE/WBE groups when preparing DBE participation reports.

Any race- or gender-conscious program could trigger legal challenges from groups arguing that the Airport's implementation of such a program is unconstitutional.

3. Over-concentration of DBEs in certain fields. BBC examined the issue of over-concentration of DBEs in certain fields.¹⁹ BBC did not identify any areas of over-concentration for SDCRAA.

4. Periodic review/tracking of MBE/WBE as well as DBE utilization. Ongoing review of program effectiveness is a requirement of 49 CFR Part 26. SDCRAA needs metrics to track success in addition to those suggested in the Federal DBE Program, including careful tracking of MBE/WBEs (by group) as well as DBE participation in both FAA-funded and locally-funded contracts.

If the Airport chooses to pursue a solely race- and gender-neutral implementation of the Federal DBE Program for the immediate future, it should monitor utilization and availability of minority- and women-owned firms, by group. The Airport would need to consider adding certain race- and gender-conscious remedies if it concludes that a solely neutral program, alone, is not effective in addressing any disparities in its utilization of minority- and women-owned firms on FAA-funded contracts.

¹⁸ <http://osdbuweb.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/WesternStatesPavingCompanyCaseQA.cfm>.

¹⁹ 49 CFR Part 26.33

D. Considering Initiatives Applicable to Locally-funded Contracts (contracts for which the Federal DBE Program does not apply)

1. Neutral remedies. SDCRAA should consider applying the neutral remedies explored here to its locally-funded contracts as well as to its FAA-funded contracts. For example, efforts to increase small business opportunities as prime contractors may be needed across different types of Airport contracts.

2. Race- and gender-based remedies. At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits the Airport 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.²⁰

At the time of this disparity study 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.

²⁰ *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).