

2016-2018 Overall DBE Goal and Methodology
Public Comment Period: July 1 through July 31, 2015

The California Department of Transportation (Caltrans) is required to submit its overall annual Disadvantaged Business Enterprise (DBE) goal and methodology to the Federal Highway Administration (FHWA) and is seeking public comment on its proposed 2016-2018 overall DBE goal and methodology.

Caltrans encourages the public to provide comments regarding its proposed overall DBE goal as well as their experience competing for or working on Caltrans projects. We also welcome suggestions on ways to improve contracting opportunities for DBEs and small businesses.

Caltrans' 2016-2018 overall DBE goal and methodology will be posted for 30 days. It is available on the Office of Business and Economic Opportunity (OBEO) website at www.dot.ca.gov/hq/bep. A copy will also be available during regular business hours at the OBEO, located at 1823 14th Street, Sacramento, California.

During the 30-day public comment period, comments may be provided via:

E-mail: 2016DBEGoalPublicComment@dot.ca.gov

Fax: 916.324.1869

Mail: Caltrans OBEO, 2016-2018 DBE G&M, 1823 14th Street, Sacramento, CA 95811

The proposed overall DBE goal for federal fiscal years 2016-2018 is 12.5 percent for FHWA-funded projects. Caltrans used information from its 2012 Availability and Disparity Study (Study) as well as current contract data to establish its 2016-2018 overall DBE goal. The Study is available on the OBEO website: http://www.dot.ca.gov/hq/bep/docs/2012_Caltrans_Availability_and_Disparity_Study_Final.pdf

Caltrans will incorporate your comments into its overall DBE goal and methodology submission; they may also be used to improve the effectiveness of the Caltrans' DBE program.

Submit your comments today!

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

Executive Summary

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

Goal Setting Methodology – Section 26.45

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

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

Step One Base Figure – Section 26.45(c)

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

The Study:

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

Summary of the Base Figure Analysis

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

1. Thirty-three percent of firms available for federally funded transportation construction and engineering work are minority/women-owned. Caltrans did not use this figure as availability for the share of federal funds going to minority/women-owned firms, since not all of these firms are available for every type and size of transportation-related work.
2. The Study examined contract type, location, and award size of work involved with Caltrans and its subrecipients' federally funded contracts and the firms available to do this work. BBC

determined the dollar-weighted availability of minority/women-owned firms is 18.1 percent after considering the size, type of work, and locations of the federally assisted transportation contracts and subcontracts in recent years.

3. When examining firms that appear to meet the U.S. Department of Transportation (USDOT) DBE certification guideline, the dollar-weighted availability figure for minority/women-owned firms was calculated to be 12.5 percent.

Available Firms Surveyed for Transportation Contracting Work

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

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

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

Weighted Relative Availability

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

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

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

FFYs 2016-2018 FHWA-Assisted Contracts

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

Resulting Baseline Goal

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

Step Two Adjustments – Section 26.45(d)

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

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

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

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

In addition, Caltrans also considered the DBE attainment over the last 5 years and is counting certified DBEs in the DBE utilization reports prepared and submitted to FHWA. The following table summarizes Caltrans DBE attainment as reported for the last 5 years:

Federal Fiscal Year	Goal	DBE Attainment	Race-neutral Portion
2015*	12.5%	11.20%	3.87%
2014	12.5%	11.89%	3.38%
2013	12.5%	10.66%	2.33%
2012	13.5%	8.43%	2.64%
2011	13.5%	7.19%	2.49%

*Six-month report for FFY 2015

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

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

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

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

- **Advancement.** Minorities and women were generally less likely than non-Hispanic whites and males to advance to the level of construction manager.
- **Business formation and ownership.** BBC examined U.S. Census data on business ownership rates using similar methods to the information reviewed in the court cases involving the Illinois and Minnesota Departments of Transportation.

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

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

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

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

- **Bonding.** Interviews with business owners and trade associations indicated difficulty obtaining bonding for small and new construction contractors in California. Problems in obtaining bonding were reported in interviews with minority/women-owned firms and nonminority-owned firms. Minority/women-owned firms in the transportation contracting industry in California are more likely to be small businesses than majority-owned firms and, therefore, may be adversely affected by barriers in obtaining bonding.
- **Insurance.** Similarly, some small business owners had problems obtaining insurance as required for Caltrans projects.

- **Largest bids of minority/women-owned firms.** In the Availability Survey, BBC asked firms in the transportation construction and engineering industry to identify the largest contract and subcontract a firm had received or bid on in the past five years. There were some minority groups for which “bid capacity” lagged behind other firms, but these disparities were explained by the firm’s specialization and age.²
- **Business earnings.** The Study reports U.S. Census data on earnings of business owners in construction and engineering. BBC identified disparities in earnings of firms in California for certain minority groups and for women:
 - o In the California construction industry, minority and female owners of construction businesses tended to earn less than non-minorities and men.
 - o In the California engineering industry, Asian American business owners had earnings equal to or greater than non-Hispanic white business owners.
 - o Business owners for other minority groups combined had lower earnings than non-Hispanic business owners of engineering firms.
 - o Female business owners had lower earnings than male business owners.

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

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

BBC reviewed disparity studies from across the country to determine the most appropriate methods to analyze information regarding marketplace conditions for women and minorities in the transportation contracting industry. For example, as stated in Appendix H on page 33, “BBC applied an ordinary least squares (OLS) regression model to the data that was very similar to models reviewed by courts after other disparity studies.” The study team also reviewed marketplace information in several disparity studies recently completed in California. The study team did not include specific results from these marketplace analyses because these studies often focused on a specific portion of California rather than the state as a whole. Additionally, with the continual release of new data by the Census Bureau and other federal data sources, many of these studies relied on older data than those used for Caltrans’ 2012 Study.

As stated in Appendix L on page 1, “Appendix L presents information from more than 130 interviews that BBC and its sub-consultants conducted as part of three recent disparity studies in Southern California – a 2011 disparity study for the Burbank-Pasadena-Glendale Airport Authority, a 2010 study for the San Diego County Regional Airport Authority, and a 2010 study

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

for a consortium of Southern California transportation agencies.³ The study team included information from these interviews to provide Caltrans with additional information on marketplace conditions throughout the state.

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

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

Summary of Step Two considerations

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

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

Public Participation Section 26.45(g)

Consultation

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

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

- Associated General Contractors
- Associated General Contractors of San Diego

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

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

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

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

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

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

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

Caltrans scheduled industry forums in Sacramento on May 1 and 8, 2015, to gather information for its FFYs 2016-2018 DBE goal and methodology submission. Caltrans Statewide SBC members and representatives from the Associated of General Contractors of California, the Southern California Contractors Association, the United Contractors Association, and the American Council of Engineering Companies were invited to participate in person or via teleconference.

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

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

Overall DBE Goal for FFYs 2016-2018 and Race/Gender - Neutral/Conscious Measures – sections 26.45(e) and 26.51

Race-Neutral and Race-Conscious DBE Goal Projections

Based on the information collected and data reviewed, Caltrans has established an overall annual goal of 12.5 percent DBE participation for FFYs 2016-2018. This overall goal is expected to be achieved in proportions of 3 percent with race-neutral measures (median by past participation, FFY 2011 - 2.49 percent, FFY 2012 - 2.64 percent, FFY 2013 - 2.33 percent, FFY 2014 - 3.38 percent, FFY 2015 - 3.87 percent) and the remaining balance of 9.5 percent with race-conscious measures. As more data on the utilization of DBEs becomes available and information is obtained from the semi-annual utilization reports, future modifications to the proportions may prove to be necessary. Future adjustments, if any, would be based on the effectiveness of each adopted measure with respect to the various groups and the different geographical areas of the State and may also be based upon information from Caltrans' new Availability and Disparity Study, which is expected to be complete by the end of March 2016.

Race-Neutral Measures

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

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

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

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

DBE Program highlights in FFY 2015:

- Continue to facilitate several workgroups with members from the Associated General Contractors, American Council of Engineering Companies, United Contractors, California Small Business Entrepreneurs, Asian American Architects and Engineers, Chambers of Commerce, and Southern California Contractors Association, and Southern California

Native American Tribes to collaborate on several areas, such as, increasing DBE participation, DBE data collection, outreach, good faith effort, as well as other ad hoc workgroups, such as the statewide SBC African American DBE Participation Workgroup, and the Caltrans DBE Participation Committee.

- Continue to waive Performance Bond requirements for Minor B projects.
- Continue to research the development of a Data Management System to capture all subcontracting activities.
- Continue to provide education and training to Caltrans Resident Engineers and Contract Managers in DBE Program requirements.
- Provide training to prime contractors regarding the DBE Program and meeting its requirements.
- Provide training to Caltrans' staff and subrecipients in DBE contract goal setting.
- Outreach to internal and external stakeholders through an OBEO network newsletter.

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

Caltrans FFYs 2016-2018 efforts will focus on:

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

Race-Conscious Measures

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

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