

CHAPTER ES.

Executive Summary

The San Diego Association of Governments (SANDAG) retained BBC Research & Consulting (BBC) to conduct a *disparity study* to help inform its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program. As a Federal Transportation Administration (FTA) fund recipient, SANDAG implements the Federal DBE Program to address potential discrimination against minority- and woman-owned businesses and DBEs in the award of FTA-funded contracts. To do so, SANDAG uses various measures to encourage the participation of minority- and woman-owned businesses in its FTA-funded contracts including both *race- and gender-neutral* measures and *race- and gender-conscious* measures. Race- and gender-neutral measures are measures that are designed to encourage the participation of all businesses in SANDAG contracting, regardless of the race/ethnicity and gender of the owners. In contrast, *race- and gender-conscious* measures are designed to specifically encourage the participation of minority- and woman-owned businesses in SANDAG contracting.

As part of the disparity study, BBC assessed whether there were any disparities between:

- The percentage of contracting dollars (including subcontract dollars) that SANDAG awarded to minority- and woman-owned businesses on construction, professional services (including architecture and engineering), and goods and other services contracts that SANDAG awarded between January 1, 2013 and December 31, 2017 (i.e., *utilization*); and
- The percentage of SANDAG's contracting dollars that minority- and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of SANDAG prime contracts and subcontracts (i.e., *availability*).

The disparity study also examined other quantitative and qualitative information related to:

- The legal framework surrounding SANDAG's implementation of the Federal DBE Program;
- Local marketplace conditions for minority- and woman-owned businesses; and
- Contracting practices and business programs that SANDAG currently has in place.

SANDAG could use study information to help refine its implementation of the Federal DBE Program, including:

- Setting an overall DBE goal for the participation of minority- and woman-owned businesses in its FTA-funded contracts;
- Determining which program measures to use to encourage the participation of minority- and woman-owned businesses in its contracting; and
- Determining which groups would be eligible to participate in race- and gender-conscious measures that the agency decides to use as part of implementing the Federal DBE Program.

BBC summarizes key information from the disparity study in five parts:

- A. Analyses in the disparity study;
- B. Availability analysis results;
- C. Utilization analysis results;
- D. Disparity analysis results;
- E. Overall DBE Goal; and
- F. Program implementation.

A. Analyses in the Disparity Study

Along with measuring disparities between the participation and availability of minority- and woman-owned businesses in SANDAG contracts, BBC also examined other quantitative and qualitative information related to the agency's implementation of the Federal DBE Program:

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal, state, and local requirements related to the Federal DBE Program and other minority- and woman-owned business programs (see Chapter 2 and Appendix B).
- BBC conducted quantitative analyses of the success of minorities, women, and minority- and woman-owned businesses throughout the San Diego region. In addition, BBC collected qualitative information about potential barriers that minority- and woman-owned businesses face in the local marketplace through in-depth interviews, surveys, public meetings, and written testimony (see Chapter 3, Appendix C, and Appendix D).
- BBC analyzed the percentage of SANDAG's contracting dollars that minority- and woman-owned businesses are available to perform. That analysis was based on surveys that the study team completed with businesses that work in industries related to the specific types of construction, professional services, and goods and other services contracts that SANDAG awards (see Chapter 5 and Appendix E).
- BBC analyzed the dollars that minority- and woman-owned businesses received on the construction, professional services, and goods and other services contracts that SANDAG awarded during the study period (see Chapter 6).
- BBC examined whether there were any disparities between the participation and availability of minority- and woman-owned businesses for the construction, professional services, and goods and other services contracts that SANDAG awarded during the study period (see Chapter 7).
- BBC reviewed SANDAG's current overall DBE goal and provided guidance related to setting its next overall DBE goal (see Chapter 8).
- BBC reviewed SANDAG's current contracting practices and measures to encourage the participation of minority- and woman-owned businesses in its contracting and provided guidance related to additional program options and potential refinements to those practices and measures (see Chapter 9).

- BBC reviewed requirements of the Federal DBE Program as well as SANDAG’s compliance with those requirements and provided guidance related to potential refinements to the agency’s implementation of the program (see Chapter 10).

B. Availability Analysis Results

BBC used a *custom census* approach to analyze the availability of minority- and woman-owned businesses that are ready, willing, and able to perform on SANDAG’s construction, professional services, and goods and other services prime contracts and subcontracts. BBC’s approach relied on information from surveys that the study team conducted with potentially available businesses located throughout the San Diego region that perform work within relevant work specializations, or *subindustries*. That approach allowed BBC to develop a representative, unbiased, and statistically-valid database of potentially available businesses and estimate the availability of minority- and woman-owned businesses in an accurate, statistically-valid manner.

Overall results. Figure ES-1 presents overall dollar-weighted availability estimates by racial/ethnic and gender group for the construction, professional services, and goods and other services prime contracts and subcontracts that SANDAG awarded during the study period. Overall, the availability of minority- and woman-owned businesses for those contracts is 12.2 percent. In other words, one would expect minority- and woman-owned businesses to receive 12.2 percent of the contracting dollars that SANDAG awards based on their availability for that work. Non-Hispanic white woman-owned businesses (3.3%) and Hispanic American-owned businesses (7.6%) exhibited the highest availability among the relevant business groups.

Figure ES-1.
Availability estimates by racial/ethnic and gender group

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Availability %
Non-Hispanic white woman-owned	3.3 %
Asian Pacific American-owned	0.6
Black American-owned	0.1
Hispanic American-owned	7.6
Native American-owned	0.4
Subcontinent Asian American-owned	0.2
Total Minority-owned	8.9
Total Minority- and Woman-owned	12.2 %

Results by contract goal status. SANDAG used DBE contract goals—a race- and gender-conscious measure—to award most of its FTA-funded contracts during the study period to encourage the participation of minority- and woman-owned businesses. However, the agency did not use contract goals to award all of its FTA-funded contracts nor did it use contract goals to award any of its locally-funded contracts during the study period, because it is prohibited from doing so by Proposition 209. It is useful to examine availability analysis results separately for contracts that SANDAG awards with the use of DBE contract goals (*goal contracts*) and contracts that SANDAG awards without the use of goals (*no-goal contracts*). Figure ES-2 presents availability estimates separately for goal and no-goal contracts. As shown in Figure ES-2, the availability of minority- and woman-owned businesses considered together is higher for goal contracts (16.3%) than no-goal contracts (6.8%).

Figure ES-2.
Availability estimates by
contract goal status

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figures F-14 and F-15 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Goal Status	
	Goal contracts	No-goal contracts
Non-Hispanic white woman-owned	4.3 %	2.0 %
Asian Pacific American-owned	0.4	0.8
Black American-owned	0.1	0.1
Hispanic American-owned	10.9	3.3
Native American-owned	0.4	0.5
Subcontinent Asian American-owned	0.2	0.2
Total Minority-owned	12.1	4.8
Total Minority- and Woman-owned	16.3 %	6.8 %

Results by funding source. SANDAG’s implementation of the Federal DBE Program applies specifically to the agency’s FTA-funded contracts. As a result, it is instructive to examine availability analysis results separately for SANDAG’s FTA-funded contracts and locally-funded contracts. (BBC considered a contract to be FTA-funded if it included at least one dollar of FTA funding.) Figure ES-3 presents those results. As shown in Figure ES-3, the availability of minority- and woman-owned businesses considered together is higher for SANDAG’s FTA-funded contracts (16.4%) than locally-funded contracts (6.6%).

Figure ES-3.
Availability estimates by
funding source

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figures F-12 and F-13 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Funding source	
	FTA-funded	Locally-funded
Non-Hispanic white woman-owned	4.3 %	2.0 %
Asian Pacific American-owned	0.5	0.7
Black American-owned	0.1	0.1
Hispanic American-owned	10.9	3.2
Native American-owned	0.5	0.4
Subcontinent Asian American-owned	0.2	0.2
Total Minority-owned	12.1	4.6
Total Minority- and Woman-owned	16.4 %	6.6 %

Results by contract role. Many minority- and woman-owned businesses often work as subcontractors. Because of that tendency, it is useful to examine availability estimates separately for prime contracts and subcontracts. Figure ES-4 presents those results. The availability of minority- and woman-owned businesses considered together is lower for SANDAG prime contracts (5.5%) than subcontracts (27.7%). Among other factors, that result could be due to subcontracts tending to be much smaller in size than prime contracts. As a result, subcontracts are often more accessible than prime contracts to minority- and woman-owned businesses.

Figure ES-4.
Availability estimates
by contract role

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figures F-8 and F-9 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
Non-Hispanic white woman-owned	1.2 %	8.1 %
Asian Pacific American-owned	0.6	0.7
Black American-owned	0.0	0.3
Hispanic American-owned	3.5	17.0
Native American-owned	0.2	1.1
Subcontinent Asian American-owned	0.1	0.4
Total Minority-owned	4.3	19.5
Total Minority- and Woman-owned	5.5 %	27.7 %

C. Utilization Analysis Results

BBC measured the participation of minority- and woman-owned businesses in SANDAG contracting in terms of *utilization*—the percentage of prime contract and subcontract dollars that minority- and woman-owned businesses received on SANDAG prime contracts and subcontracts during the study period.

Overall results. Figure ES-5 presents the percentage of contracting dollars that minority- and woman-owned businesses considered together received on construction, professional services, and goods and other services contracts that SANDAG awarded during the study period, including both prime contracts and subcontracts. As shown in Figure ES-1, overall, minority- and woman-owned businesses received 15.8 percent of the contracting dollars that SANDAG awarded during the study period. Less than one-half of those contracting dollars—6.6 percent—went to certified DBEs. Asian Pacific American-owned businesses (7.6%) and non-Hispanic white woman-owned businesses (3.5%) exhibited higher levels of participation than all other relevant groups.

**Figure ES-5.
Overall utilization results**

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Utilization %
Minority- and Woman-owned	
Non-Hispanic white woman-owned	3.5 %
Asian Pacific American-owned	7.6
Black American-owned	0.5
Hispanic American-owned	2.9
Native American-owned	0.8
Subcontinent Asian American-owned	0.5
Total Minority-owned	12.3
Total Minority- and Woman-owned	15.8 %
DBE-certified	
Non-Hispanic white woman-owned	2.1 %
Asian Pacific American-owned	1.3
Black American-owned	0.5
Hispanic American-owned	1.4
Native American-owned	0.8
Subcontinent Asian American-owned	0.4
Total DBE-certified Minority-owned	4.5
Total DBE-certified	6.6 %

Results by contract goal status. As described above, SANDAG used DBE contract goals to award most of its FTA-funded contracts during the study period. However, the agency did not use contract goals to award all of its FTA-funded contracts nor did it use contract goals to award any of its locally-funded contracts during the study period, because it is prohibited from doing so by Proposition 209. It is instructive to compare the participation of minority- and woman-owned businesses between contracts that SANDAG awarded with and without the use of contract goals (*goal* contracts and *no-goal* contracts, respectively). Doing so provides useful information about outcomes for minority- and woman-owned businesses on contracts that SANDAG awarded in a race- and gender-neutral environment and the efficacy of race- and gender-conscious measures in encouraging the participation of minority- and woman-owned businesses in agency contracts.

Figure ES-6 presents utilization results separately for SANDAG goal contracts and no-goal contracts. Minority- and woman-owned businesses considered together showed lower participation in goal contracts (14.8%) than in no-goal contracts (17.2%). Among other factors, that result could be due to the fact that no-goal contracts largely comprise locally-funded contracts, which tend to be smaller in size than SANDAG’s FTA-funded contracts and are thus often more accessible to minority- and woman-owned businesses. Examining disparity analysis results provides a better assessment of the efficacy of contract goals, because those results also take the availability of minority- and woman-owned businesses for goal and no-goal contracts into account, including contract size and myriad other factors.

Figure ES-6.
Utilization results by contract goal status

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figures F-14 and F-15 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Goal status	
	Goal contracts	No-goal contracts
Non-Hispanic white woman-owned	4.7 %	1.8 %
Asian Pacific American-owned	3.9	12.5
Black American-owned	0.9	0.0
Hispanic American-owned	3.3	2.4
Native American-owned	1.4	0.0
Subcontinent Asian American-owned	0.6	0.3
Total Minority-owned	10.1	15.3
Total Minority- and Woman-owned	14.8 %	17.2 %

Results by funding source. SANDAG’s implementation of the Federal DBE Program applies specifically to the agency’s federally-funded contracts. As a result, it is instructive to examine utilization analysis results separately for SANDAG’s FTA-funded contracts and locally-funded contracts. Figure ES-7 presents those results. As shown in Figure ES-7, the participation of minority- and woman-owned businesses considered together was lower for SANDAG’s FTA-funded contracts (14.8%) than for its locally-funded contracts (17.2%). Among other factors, that result could be due to the fact that SANDAG’s locally-funded contracts tend to be smaller in size than its FTA-funded contracts, and are thus often more accessible to minority- and woman-owned businesses.

Figure ES-7.
Utilization results by funding source

Note:

Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

For more detail and results by group, see Figures F-12 and F-13 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Funding source	
	FTA-funded	Locally-funded
Non-Hispanic white woman-owned	4.7 %	1.8 %
Asian Pacific American-owned	3.9	12.6
Black American-owned	0.9	0.0
Hispanic American-owned	3.3	2.5
Native American-owned	1.4	0.0
Subcontinent Asian American-owned	0.6	0.3
Total Minority-owned	10.1	15.4
Total Minority- and Woman-owned	14.8 %	17.2 %

Results by contract role. Many minority- and woman-owned businesses are small businesses and thus often work as subcontractors, so it might be reasonable to expect higher participation of minority- and woman-owned business in subcontracts than in prime contracts. Figure ES-8 presents utilization results for minority- and woman-owned businesses separately for prime contracts and subcontracts. The participation of minority- and woman-owned businesses considered together was substantially higher in SANDAG subcontracts (29.6%) than prime contracts (9.8%).

Figure ES-8.
Utilization results by contract role

Note:
Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.
For more detail and results by group, see Figures F-8 and F-9 in Appendix F.

Source:
BBC Research & Consulting availability analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
Non-Hispanic white woman-owned	0.7 %	9.8 %
Asian Pacific American-owned	8.4	5.7
Black American-owned	0.0	1.7
Hispanic American-owned	0.5	8.4
Native American-owned	0.0	2.7
Subcontinent Asian American-owned	0.2	1.3
Total Minority-owned	9.1	19.8
Total Minority- and Woman-owned	9.8 %	29.6 %

D. Disparity Analysis Results

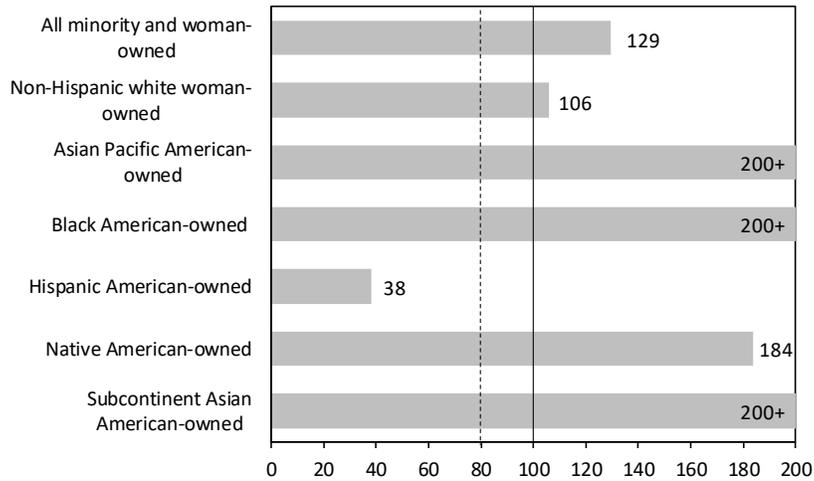
Although information about the participation of minority- and woman-owned businesses in SANDAG contracts is instructive on its own, it is even more instructive when compared with the level of participation that might be expected based on the availability of minority- and woman-owned businesses for SANDAG work. BBC compared the participation of minority- and woman-owned businesses in SANDAG prime contracts and subcontracts with the percentage of contract dollars that those businesses might be expected to receive based on their availability for that work. BBC calculated *disparity indices* for each relevant business group and for various contract sets by dividing percent participation by percent availability and multiplying the quotient by 100. A disparity index of 100 indicates an exact match between participation and availability for a particular group for a particular set of contracts (referred to as *parity*). A disparity index of less than 100 indicates a disparity between participation and availability. A disparity index of 80 or less indicates a *substantial* disparity between participation and availability and is often considered by the courts as an *inference of discrimination* against the group exhibiting the substantial disparity.

Overall results. Figure ES-7 presents disparity indices for all relevant prime contracts and subcontracts that SANDAG awarded during the study period. The line drawn at a disparity index level of 100 indicates parity, and the line drawn at a disparity index level of 80 indicates a substantial disparity. As shown in Figure ES-7, overall, the participation of minority- and woman-owned businesses in contracts that SANDAG awarded during the study period was higher than what one might expect based on the availability of those businesses for that work. The disparity index of 129 indicates that minority- and woman-owned businesses considered together received approximately \$1.29 for every dollar that they might be expected to receive based on their availability for transportation-related contracts that SANDAG awarded during the study period. Disparity analysis results by individual group indicated that Hispanic American-owned businesses (disparity index of 38) exhibited substantial disparities.

**Figure ES-7.
Disparity indices
by group**

Note:
For more detail, see
Figure F-2 in Appendix F.

Source:
BBC Research &
Consulting disparity
analysis.



SANDAG used DBE contract goals to award most of the transportation-related contracts that it awarded during the study period. The disparity analysis results shown in Figure ES-7 are largely reflective of the use of those measures. A crucial question is whether any disparities exist between the participation and availability of minority- and woman-owned businesses on contracts that SANDAG awarded without the use of those goals.

Results by goals status. SANDAG used DBE contract goals to award most contracts—both FTA- and locally-funded contracts—during the study period to encourage the participation of minority- and woman-owned businesses. SANDAG’s use of DBE contract goals is a race- and gender-conscious measure. It is useful to examine disparity analysis results separately for goal contracts and no-goal contracts. Assessing whether any disparities exist for no-goal contracts provides useful information about outcomes for minority- and woman-owned businesses on contracts that SANDAG awarded in a race- and gender-neutral environment and whether there is evidence that certain groups face any discrimination or barriers as part of SANDAG contracting.^{1, 2, 3}

Figure ES-8 presents disparity analysis results separately for goal and no-goal contracts. As shown in Figure ES-8, minority- and woman-owned businesses considered together showed a disparity that was close to the threshold of being considered substantial on goal contracts (disparity index of 91). Moreover, they did not show a substantial disparity on no-goal contracts (disparity index of 200+). Disparity analysis results by individual group indicated that:

¹ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, 1192, 1196 (9th Cir. 2013).

² *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 985, 987-88 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027, 124 S. Ct. 556 (2003).

³ *H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al.*, 615 F.3d 233,246 (4th Cir. 2010).

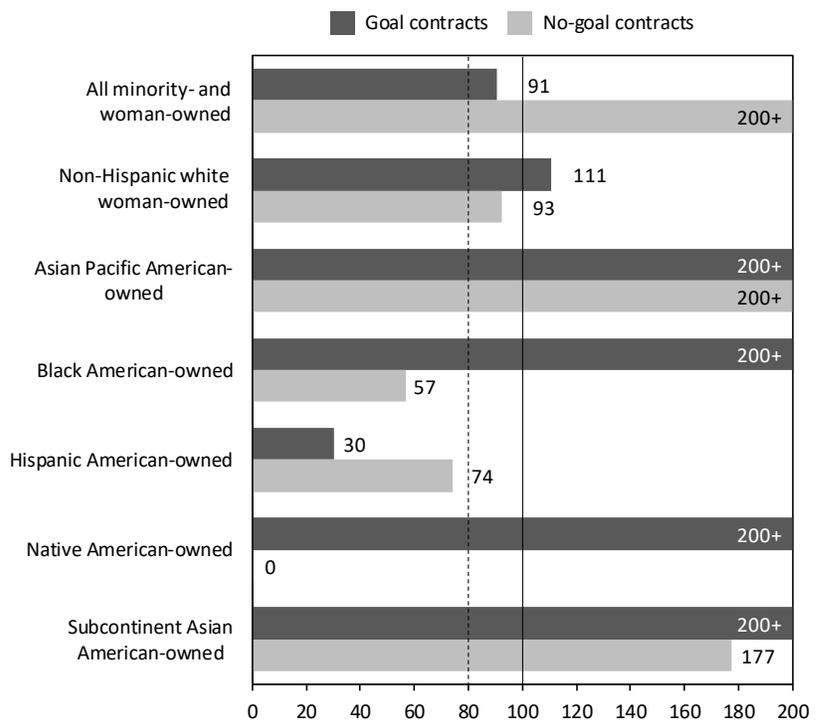
- Hispanic American-owned businesses (disparity index of 30) exhibited substantial disparities on goal contracts; and
- Black American-owned businesses (disparity index of 57), Hispanic American-owned businesses (disparity index of 74), and Native American-owned firms (disparity index of 0) exhibited substantial disparities on no-goal contracts.

Taken together, the results presented in Figure ES-8 show that SANDAG’s use of DBE contract goals is somewhat effective in encouraging the participation of certain minority- and woman-owned businesses in its contracts. Moreover, those results indicate that when SANDAG does not use race- and gender-conscious measures, more relevant business groups are substantially underutilized in SANDAG’s transportation-related contracting.

Figure ES-8.
Disparity indices for goal and no-goal contracts

Note:
 For more detail, see Figures F-14 and F-15 in Appendix F.

Source:
 BBC Research & Consulting disparity analysis.

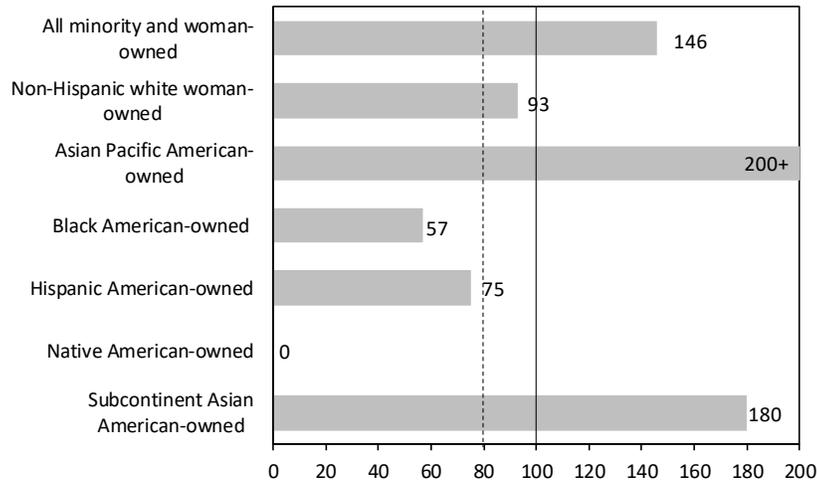


Results for locally-funded non-Mid Coast Trolley Extension projects. During the study period, SANDAG initiated a major construction project to expand the Mid Coast Trolley. This project included numerous FTA-funded contracts and some locally funded contracts. Due to the nature of this project, it is unlikely that SANDAG will have a similar project in the near future. As a result it is instructive to analyze locally funded contracts excluding all Mid Coast Trolley-related contracts. As shown in Figure ES-9, the participation of minority- and woman-owned businesses in those contracts was higher than what one might expect based on the availability of those businesses for that work. Disparity analysis results by individual group indicated that Black American-owned businesses (disparity index of 57), Hispanic American-owned businesses (disparity index of 75), and Native American-owned businesses (disparity index of 0) exhibited substantial disparities on these contracts.

**Figure ES-9.
Disparity indices
by group**

Note:
For more detail, see Figure
F-2 in Appendix F.

Source:
BBC Research & Consulting
disparity analysis.



E. Overall DBE Goal

As part of its implementation of the Federal DBE Program, SANDAG is required to set an overall goal for DBE participation in its FTA-funded contracts. Agencies that implement the Federal DBE Program must develop overall DBE goals every three years. However, the overall DBE goal is an *annual* goal in that an agency must monitor DBE participation in its FTAA-funded contracts every year. 49 Code of Federal Regulations (CFR) Part 26.45 outlines a two-step process for agencies to set their overall DBE goals: 1) establishing a base figure; and 2) considering a *step-2 adjustment*.

Establishing a base figure. For the purposes of helping SANDAG establish a base figure for its overall DBE goal, BBC used information from the availability analysis. The study team considered information about the availability of *potential DBEs*—minority- and woman-owned businesses that are currently DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26.65—for the FTA-funded prime contracts and subcontracts that SANDAG awarded during the study period. Figure ES-13 presents the availability of potential DBEs for the FTA-funded prime contracts and subcontracts that SANDAG awarded during the study period. As show in Figure ES-10, potential DBEs might be expected to receive 10.6 percent of SANDAG’s FTA-funded prime contract and subcontract dollars based on their availability for that work. SANDAG might consider 10.6 percent as the base figure for its overall DBE goal if the agency anticipates that the types and sizes of the FTA-funded contracts that it will award in the future will be similar to those of the FTA-funded contracts that it awarded during the study period.

Figure ES-13.
Availability components of the base figure

Business group	Base Figure Component			Weighted Average
	Construction	Professional Services	Goods and Other Services	
Asian Pacific American-owned	0.0 %	1.8 %	0.7 %	0.5 %
Black American-owned	0.2	0.0	0.8	0.1
Hispanic American-owned	3.7	15.5	20.4	7.1
Native American-owned	0.5	0.3	0.0	0.3
Subcontinent Asian American-owned	0.1	0.6	0.0	0.2
Non-Hispanic white woman-owned	1.4	5.5	6.1	2.4
Total potential DBEs	5.8 %	23.8 %	28.0 %	10.6 %
Industry weight	73.5 %	26.2 %	0.4 %	

Note: Numbers rounded to nearest tenth of 1 percent and may not sum exactly to totals.

Source: BBC Research & Consulting availability analysis.

Considering a step-2 adjustment. The Federal DBE Program requires SANDAG to consider a potential step-2 adjustment to its base figure as part of determining its overall DBE goal and outlines several factors that the agency must consider when assessing whether to make any adjustment:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.⁴

BBC completed an analysis of each of the above step-2 factors. Much of the information that BBC examined was not easily quantifiable but is still relevant to SANDAG as it determines whether to make a step-2 adjustment. Taken together, the quantitative and qualitative evidence that the study team collected as part of the disparity study may support a step-2 adjustment to the base figure as SANDAG sets its overall DBE goal. Based on information from the disparity study, there are reasons why SANDAG might consider an upward adjustment to its base figure:

- SANDAG’s utilization reports to FTA for federal fiscal years 2014 through 2018 indicated median annual DBE participation of 11.3 percent in FTA-funded contracts for those years, which is higher than its base figure.
- SANDAG might adjust its base figure upward to account for barriers that minorities and women face in human capital and owning businesses in the local contracting industry. Such an adjustment would correspond to a “determination of the level of DBE participation you

⁴ 49 CFR Section 26.45.

would expect absent the effects of discrimination.”⁵ For example, BBC’s analyses indicated that if minorities and women owned businesses at the same rate as comparable non-Hispanic white men, then the availability of minority- and woman-owned businesses for SANDAG’s FTA-funded contracts might be 12.3 percent.

- SANDAG might also adjust its base figure upward in light of evidence of barriers that affect minorities, women, and minority- and woman-owned businesses in obtaining financing, bonding, and insurance and evidence that minority- and woman-owned businesses are less successful than comparable businesses owned by non-Hispanic white men.

There are also reasons why SANDAG might consider a downward adjustment to its base figure. For example, the United States Department of Transportation’s (USDOT’s) “Tips for Goal-Setting” suggests that an agency can make a step-2 adjustment by averaging the base figure with past median DBE participation. In contrast, to SANDAG’s utilization reports to FTA, BBC’s analysis of DBE participation in SANDAG’s FTA-funded contracts indicates DBE participation of 9.8 percent in SANDAG’s FTA-funded contracts, which is lower than the base figure. If SANDAG were to adjust its base figure based on DBE participation information from the disparity study, it might consider taking the average of its base figure and the 9.8 percent DBE participation.

USDOT regulations clearly state that SANDAG is required to review a broad range of information when considering whether it is necessary to make a step-2 adjustment—either upward or downward—to its base figure. However, the agency is not required to make an adjustment as long as it can explain what factors it considered and can explain its decision as part of its goal-setting process.

F. Program Implementation

Chapters 9 and 10 review additional information relevant to SANDAG’s implementation of the Federal DBE Program including program measures that the agency could consider using to encourage the participation of minority- and woman-owned businesses in its contracting. SANDAG should review that information as well as other relevant information as it makes decisions concerning the future implementation of the Federal DBE Program. To that end, BBC presents the following areas of potential refinement for SANDAG’s consideration:

- SANDAG hosts and participates in many networking and outreach events that include information about marketing, the DBE certification process, doing business with the agency, and available bid opportunities. In addition to its scheduled networking and outreach events, SANDAG also works closely with regional partners to disseminate information to their members about policies, procedures, and upcoming opportunities. SANDAG should consider continuing those efforts but might also consider broadening them to include more partnerships with local trade organizations and other public agencies.
- In general, minority- and woman-owned businesses exhibited reduced availability for relatively large contracts that SANDAG awarded during the study period. In addition, as part of in-depth interviews and public meetings, several minority- and woman-owned

⁵ 49 CFR Section 26.45 (b).

businesses reported that the size of government contracts often serves as a barrier to their success. To further encourage the participation of small businesses—including many minority- and woman-owned businesses—SANDAG should consider making efforts to unbundle relatively large contracts into several smaller contracts. Doing so would result in that work being more accessible to small businesses, which in turn might result in greater minority- and woman-owned business participation.

- Minority- and woman-owned businesses exhibited higher availability for relatively small contracts—including small prime contracts—that SANDAG awarded during the study period. However, disparity analysis results indicated substantial disparities for all racial/ethnic and gender groups on small prime contracts. SANDAG could consider implementing a small-business set-aside program to encourage the participation of small businesses—including many minority- and woman-owned businesses—as prime contractors. In doing so, SANDAG might reserve bid opportunities of a certain size (e.g., \$250,000 or less) for small business bidding. The agency should review regulations related to such measures if the agency considers implementing a small business set-aside program.
- Subcontracts represent accessible opportunities for minority- and woman-owned businesses to become involved in public contracting. However, subcontracting accounted for a relatively small percentage of the total contracting dollars that SANDAG awarded during the study period. The agency could consider implementing a program that requires prime contractors to include certain levels of subcontracting as part of their bids and proposals. For each contract to which the program applies, SANDAG would set a minimum subcontracting percentage based on the type of work involved, the size of the project, and other factors. Prime contractors bidding on the contract would be required to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be responsive. If SANDAG were to implement such a program, it should include flexibility provisions such as a good faith efforts process.
- SANDAG currently uses DBE contract goals on many of the contracts it awards. Prime contractors can meet those goals by either making subcontracting commitments with certified DBE subcontractors at the time of bid or by showing that they made good faith efforts to fulfill the goals but could not do so. Disparity analysis results indicated that some racial/ethnic and gender groups showed substantial disparities on that SANDAG awarded without the use of DBE contract goals. Furthermore, SANDAG’s use of DBE contract goals appeared to address some of those disparities. Based on those results, the agency should consider continuing its use of DBE contract goals for underutilized groups in the future. SANDAG will need to ensure that the use of those goals meets the *strict scrutiny* standard of constitutional review.
- SANDAG requires prime contractors to pay their subcontractors within 30 days of receiving payment from the agency. As part of in-depth interviews and public forums, several businesses—including many minority- and woman-owned businesses—reported difficulties with receiving payment in a timely manner on government contracts, particularly when they work as subcontractors. SANDAG should consider reinforcing its prompt payment policies with its procurement staff and with prime contractors. The agency could also consider reducing the timeframe within which prime contractors are required to pay their subcontractors (e.g., within 10 days of receiving payment from

SANDAG). Doing so might help ensure that both prime contractors and subcontractors receive payment in a timely manner.

As part of the disparity study, the study team also examined information concerning conditions in the local marketplace for minorities, women, and minority- and woman-owned businesses, including results for different racial/ethnic and gender groups. SANDAG should review the full disparity study report, as well as other information it may have, in determining whether it needs to continue using race- or gender-conscious measures as part of its implementation of the Federal DBE Program, and if so, in determining what actions it might take based on study results.