SECTION VI.

Summary

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

1. Setting an overall annual aspirational goal for DBE participation in FTA-funded contracts;
2. Determining achievement of the annual aspirational goal through neutral means;
3. Identifying specific measures to be used in implementing the Federal DBE Program; and
4. Considering initiatives applicable to its locally-funded contracts (contracts for which the Federal DBE Program does not apply).

1. Overall Annual Aspirational Goal

As presented in Section III, BBC’s availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs would receive 16.2 percent of prime contract and subcontract dollars for SANDAG’s FTA-funded transportation contracts based on their relative availability for this work.

- SANDAG should consider 16.2 percent as the base figure for its overall annual aspirational goal for DBE participation if the types of FTA-funded contracts for the time period covered by the goal will be similar to FTA-funded contracts from 2003 through 2007.

- The 16.2 percent base figure exceeds SANDAG’s 6 percent overall annual aspirational DBE goal for FFY 2009. SANDAG only included certified DBEs in its calculations; BBC counted in the base figure minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified.¹

Note that the annual aspirational goal could change based on changes in the actual contract opportunities that are available in any given year. SANDAG can also 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 (49 CFR Section 26.45) outlines factors that recipients of USDOT funds must consider when assessing whether or not to make a “step 2” adjustment to the base figure:

a. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;

b. Data on employment, self-employment, education, training and union apprenticeship programs;

c. Information on the ability of DBEs to get financing, bonding and insurance; and

d. Other relevant data.

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

**a. Volume of work DBEs have performed in recent years.** BBC analyzed utilization of certified DBEs for SANDAG FTA-funded contracts. Figure VI-1, on the following page, describes how BBC estimated overall DBE utilization combining different groups of FTA-funded contracts from 2003 through 2007. Most of the dollars of FTA-funded contracts applicable in this analysis were directly studied in the disparity analysis. BBC developed estimates of DBE utilization for two smaller sets of FTA-funded contracts, as described below:

- As presented in Figure VI-1, DBEs obtained 12.7 percent of the $139 million of FTA-funded contract dollars BBC examined in the disparity analysis.

- There was $24.4 million in a variety of construction, engineering, and goods and services contracts not included in BBC’s disparity analysis that were similar to contracts in the disparity analysis. For purposes of calculating overall DBE utilization, BBC used DBE participation determined for the $139 million of disparity analysis contracts (12.7%) as a representative figure for DBE utilization on the $24.4 million of similar contracts not included in the disparity analysis.

- Some SANDAG contracts were very different from the FTA-funded contracts examined in the disparity analysis (e.g., types of procurements primarily made from national markets). BBC assumed no DBE participation for the $7.6 million of these contracts.

Based on the analysis discussed above, DBE utilization was about 12.2 percent for the $171 million of SANDAG’s 2003–2007 FTA-funded contracts examined in Figure VI-2. SANDAG could consider this information in assessing whether or how to make any step 2 adjustments to the base figure.

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2 In many instances, the total dollars of these highly varied types of contracts were too small to warrant inclusion in the disparity analysis.
Figure VI-1.  
Estimated DBE participation on FTA-funded contracts, 2003-2007

<table>
<thead>
<tr>
<th></th>
<th>(a) DBE utilization on FTA-funded contracts 2003-2007 (millions)</th>
<th>(a) FTA-funded contract dollars 2003-2007 (millions)</th>
<th>(b) DBE utilization (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts considered in the annual goal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examined in the study</td>
<td>$17.7</td>
<td>$138.8</td>
<td>12.7%</td>
</tr>
<tr>
<td>Other similar to above contracts*</td>
<td>3.1</td>
<td>24.4</td>
<td>12.7%</td>
</tr>
<tr>
<td>Other not similar to above contracts**</td>
<td>0.0</td>
<td>7.6</td>
<td>0.0%</td>
</tr>
<tr>
<td>Total examined</td>
<td>$20.8</td>
<td>$170.8</td>
<td>12.2%</td>
</tr>
<tr>
<td>Contracts not considered in the annual goal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governments, associations and not-for-profit agencies</td>
<td>$0.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TVM or TVM-related</td>
<td>2.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transit operations contracts</td>
<td>5.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total FTA-funded contracts</td>
<td>$179.8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.

b. Employment, self-employment, education and training. 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 F contains a detailed analysis of education, employment and advancement in the Southern California construction and engineering industries. Results include:

- African Americans comprised 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.

- Relative to the representation of women among college graduates in Southern California, few civil, environmental and geological engineers are women (15% in 2007).

- Representation of African Americans and Asian-Pacific Americans in the construction industry is relatively low, even among entry-level jobs. The percentage of California 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 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 is evident in 2000 and 2007 in both San Diego 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 is relatively low (13% in the San Diego area in 2007). In many Southern California construction trades, only one or two of every 100 workers are women.
- There are 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 are 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.  

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

Appendix G provides detailed results of these regression models.

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3 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.
Figure VI-2 quantifies the impact on the base figure if the above groups 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. As shown in Figure VI-2, DBE availability adjusted for disparities in business ownership rates indicates an overall availability for DBEs of 21.9 percent.

- Separate “but for” calculations were made for construction and engineering, and then weighted based on SANDAG’s dollars of FTA-funded contracts for these types of procurement. Within construction, potential adjustments to availability were calculated 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.

- Figure VI-2 does not make any adjustment to availability for goods and other services firms (regression models for business ownership were not developed for goods and other services).

- Because BBC also estimated DBE availability for the $24.4 million of other FTA-funded contracts similar to the construction, engineering and other goods and services contracts directly studied for SANDAG, availability for this small group of contracts was adjusted as well.

- At the bottom of Figure VI-2, availability for the $7.6 million in contracts not similar to the contracts included in the disparity analysis received no adjustment to availability (DBE availability for these contracts was assumed to be 0% as discussed in Section III).

The columns of Figure VI-2 represent the following:

a. **Current availability.** Section III of the report presents current availability for SANDAG FTA-funded contracts.

b. **Disparity indices for business ownership.** Appendix G explains the regression models BBC used to examine potential disparities in business ownership rates based on race, ethnicity or gender. Column b presents disparity indices for race/ethnic/gender groups showing statistically significant disparities.

c. **Availability after initial adjustment.** Dividing current availability (column a) by the disparity index from the business ownership regression models (column b) and then multiplying by 100 produces initial availability estimates after adjusting for the disparities in business ownership.

d. **Availability after scaling to 100%.** The results in column c were rescaled to equal 100 percent. Rescaled estimates are shown in column d of Figure VI-2.

e. **Components of goal.** The final column of values is equal to the adjusted availability for minorities and women weighted by the share of FTA-funded contract dollars each procurement area represented. For example, 28.7 percent of SANDAG’s FTA-funded contract dollars were construction contracts. The 6.40 percent components of goal figure for construction is equal to 22.3 percent adjusted DBE availability for construction (column d) multiplied by 28.7 percent. These values in column e are summed to equal total adjusted DBE availability — 21.9 percent.
### Figure VI-2.
**Potential adjustment to base figure for overall annual aspirational DBE goal**

<table>
<thead>
<tr>
<th>Business ownership</th>
<th>a. Current availability</th>
<th>b. Disparity index for business ownership</th>
<th>c. Availability after initial adjustment*</th>
<th>d. Availability after scaling to 100%</th>
<th>e. Components of goal**</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Construction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>African Americans</td>
<td>1.5 %</td>
<td>71</td>
<td>2.1 %</td>
<td>1.9 %</td>
<td></td>
</tr>
<tr>
<td>Subcontinent Asian Americans</td>
<td>0.1</td>
<td>50</td>
<td>0.2</td>
<td>0.2</td>
<td></td>
</tr>
<tr>
<td>Hispanic Americans</td>
<td>6.6</td>
<td>64</td>
<td>10.3</td>
<td>9.5</td>
<td></td>
</tr>
<tr>
<td>White women</td>
<td>5.3</td>
<td>57</td>
<td>9.3</td>
<td>8.6</td>
<td></td>
</tr>
<tr>
<td>Asian-Pacific Americans and Native Americans</td>
<td>2.3</td>
<td>no adjustment</td>
<td>2.3</td>
<td>2.1</td>
<td>6.40%</td>
</tr>
<tr>
<td><strong>Total minority and female</strong></td>
<td>15.8 %</td>
<td>24.2 %</td>
<td>22.3 %</td>
<td></td>
<td>6.40%</td>
</tr>
<tr>
<td>Majority</td>
<td>84.2</td>
<td></td>
<td>84.2</td>
<td>77.7</td>
<td></td>
</tr>
<tr>
<td><strong>Total firms</strong></td>
<td>100.0 %</td>
<td>108.4 %</td>
<td>100.0 %</td>
<td></td>
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</tr>
<tr>
<td><strong>Engineering</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian-Pacific Americans</td>
<td>4.0</td>
<td>66</td>
<td>6.1</td>
<td>5.6</td>
<td></td>
</tr>
<tr>
<td>White women</td>
<td>8.3</td>
<td>58</td>
<td>14.3</td>
<td>13.2</td>
<td></td>
</tr>
<tr>
<td>Other minority groups</td>
<td>5.4</td>
<td>no adjustment</td>
<td>5.4</td>
<td>5.0</td>
<td></td>
</tr>
<tr>
<td><strong>Total minority and female</strong></td>
<td>17.7 %</td>
<td>25.8 %</td>
<td>23.8 %</td>
<td>12.30%</td>
<td></td>
</tr>
<tr>
<td>Majority</td>
<td>82.3</td>
<td></td>
<td>82.3</td>
<td>76.2</td>
<td></td>
</tr>
<tr>
<td><strong>Total firms</strong></td>
<td>100.0 %</td>
<td>108.1 %</td>
<td>100.0 %</td>
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<tr>
<td><strong>Goods and services</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total minority and female</td>
<td>10.0 %</td>
<td>no adjustment</td>
<td>10.0 %</td>
<td>10.0 %</td>
<td>0.09%</td>
</tr>
<tr>
<td>Majority</td>
<td>90.0</td>
<td></td>
<td>90.0</td>
<td>90.0</td>
<td></td>
</tr>
<tr>
<td><strong>Total firms</strong></td>
<td>100.0 %</td>
<td>100.0 %</td>
<td>100.0 %</td>
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<td></td>
</tr>
<tr>
<td><strong>Other similar to above contracts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total minority and female</td>
<td>16.9 %</td>
<td>proportional</td>
<td>23.1 %</td>
<td>21.8 %</td>
<td>3.11%</td>
</tr>
<tr>
<td>Majority</td>
<td>83.1</td>
<td>adjustment</td>
<td>83.1</td>
<td>78.2</td>
<td></td>
</tr>
<tr>
<td><strong>Total firms</strong></td>
<td>100.0 %</td>
<td>106.2 %</td>
<td>100.0 %</td>
<td></td>
<td></td>
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<tr>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other not similar to above contracts</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total minority and female</td>
<td>0.0 %</td>
<td>no adjustment</td>
<td>0.0 %</td>
<td>0.0 %</td>
<td>0.00%</td>
</tr>
<tr>
<td>Majority</td>
<td>100.0</td>
<td></td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
<tr>
<td><strong>Total firms</strong></td>
<td>100.0 %</td>
<td>100.0 %</td>
<td>100.0 %</td>
<td></td>
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<tr>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total minority and female after adjustments and weighting</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>21.90%</td>
</tr>
</tbody>
</table>

**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 FTA-funded contract dollars in that category (construction is 28.7%, engineering is 51.6%, goods and services is 0.9%, other similar to above contracts is 14.3% and other not similar to above contracts is 4.4%).

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 B.

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 did not have specific, recent instances of discriminatory behavior in the local industry:

- Some interviewees expressed experiences of discriminatory behavior that occurred in the past which 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.”
c. Access to financing, bonding and insurance. BBC collected and analyzed both quantitative and qualitative information concerning access to capital. Information about bonding and insurance was also examined.

Quantitative information. BBC’s analysis of available data indicates that minority-owned firms are more likely to experience problems accessing capital than non-Hispanic white-owned firms. Appendix H provides these results.

Some of this evidence relates to homeownership and home mortgages:

- Relatively fewer African Americans, Hispanic Americans and Native Americans in San Diego County and Southern California own homes than non-Hispanic whites, and those who do own homes tend 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 are more likely than non-minorities to have their applications denied.

- African American, Hispanic American and Native American mortgage borrowers are more likely to have subprime loans.

Other evidence pertains 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 have higher denial rates when applying for business loans after controlling for other factors. When they receive loans, African American- and Hispanic American-owned firms appear to pay higher interest rates, after controlling for other factors.

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

Qualitative information. During 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?”

- 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 Consortium agency 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 woman 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.

d. Other data concerning relative success of minority- and women-owned firms in Southern California. The Federal DBE Program (49 CFR Section 26.45) 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. One logical factor is the relative success of minority- and women-owned firms in the local transportation contracting industry. Examples of quantitative and qualitative information examined in the disparity study are provided below.

Quantitative information. Analyses of different U.S. Census data include 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. The regression analysis suggests the possibility of disparities for African American, Asian-Pacific American and Native American business owners, but these results were not statistically significant (perhaps due to small sample sizes in some cases).

Regression analyses for Southern California engineering business owners indicate 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.

- **Goods and services.** Lower annual revenue for minority- and women-owned goods and services firms compared with majority-owned firms.

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

- **Bidding on public sector work.** Relatively fewer African American-, Hispanic American- and Native 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.

- **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.

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

5 BBC’s availability analysis presented in Section III accounts for differences in bidding on public sector work between MBE/WBEs and majority-owned firms.
**Bid capacity.** The availability interviews collected data on the largest contract or subcontract a firm had performed or bid on within the previous five years. This statistic is referred to as “bid capacity” in this report.6

- MBE/WBEs were less likely than majority-owned firms to have received or bid on large contracts or subcontracts.

- When BBC conducted regression analyses to further explore these differences, firm specialization and age were important in explaining whether a firm had high bid capacity. BBC did not identify statistically significant differences in bid capacity based on minority or female ownership in the construction industry after controlling for specialization and company age.

- 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.”

  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.

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6 Differences in bid capacity are also reflected in BBC’s availability analyses as described in Section III.
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 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 SANDAG 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 SANDAG might consider a higher overall aspirational goal than the 16.2 percent base figure.

- If SANDAG were to make an upward adjustment, it could consider the 21.9 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 16.2 percent.
**Option 2 – Making no step 2 adjustment.** SANDAG might adopt the 16.2 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 this decision.

**Option 3 – Making a downward adjustment at this time.** There are also reasons for a downward step 2 adjustment from the 16.2 percent base figure:

- BBC’s estimate of overall DBE participation on FTA-funded contracts for 2003 through 2007 was about 12 percent. This level of participation figure may represent a minimum demonstration of “current capacity of DBEs to perform work.”

SANDAG might conclude that a downward adjustment from the 16.2 percent base figure for DBE participation is warranted because of the past DBE participation of 12.2 percent. One approach to this adjustment would be to calculate an average of the 16.2 percent base figure and 12.2 percent past DBE participation, which is 14.2 percent. This methodology is consistent with some other Consortium agencies’ past approaches to step 2 adjustments that were approved by FTA.

### 2. Percentage of the Annual Goal to be Achieved through Neutral Means

In 49 CFR Section 26.51, USDOT requires agencies to meet the maximum feasible portion of the overall annual aspirational DBE goal using race-neutral means. USDOT Questions and Answers about 49 CRF Part 26 addresses how federal aid recipients project what portion of their overall annual goal they will meet through race- and gender-neutral means. Examples of questions recipients could ask in making this analysis include:

- What is the participation of DBEs in the recipient’s contracts that do not have contract goals?
- 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 programs without goals?
- What is the extent of race-neutral efforts that the recipient will have in place for the next fiscal year?
- 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?
- To what extent have DBE primes participated in the recipient’s programs in the past?
- To what extent has the recipient oversubscribed its DBE goals in the past?

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7 Per 49 CFR Section 26.45 (d)(1)(i).
These types of analyses are generally consistent with relevant court decisions discussed in Appendix A, including the Ninth Circuit Court of Appeals decision in *Western States Paving*, and with the guidance from USDOT subsequent to the *Western States Paving* decision.\(^9\)

**a. Participation on SANDAG contracts without goals/good faith efforts program.**

SANDAG changed its implementation of the Federal DBE Program on May 1, 2006. After May 1, 2006, SANDAG set advisory goals for DBE participation on FTA-funded contracts, but did not require bidders to meet those goals or show good faith efforts. In early 2007, SANDAG discontinued setting advisory goals for contracts.

There were 30 FTA-funded contracts from May 2006 through December 2007 within the procurement areas BBC examined in the SANDAG disparity study. Including subcontracts, BBC analyzed 77 FTA-funded contract elements during this time period.

**Overall utilization of minority- and women-owned firms.** MBE/WBEs obtained 21 percent of the FTA-funded contract dollars for May 2006 through December 2007, about the same as MBE/WBE utilization for FTA-funded contracts from 2003 to April 2006 when the DBE contract goals/good faith efforts program was in place. As shown in Figure VI-3, nearly all of the FTA-funded contract dollars that MBE/WBEs received for May 2006–December 2007 went to firms that were certified as DBEs. Asian-Pacific American-owned firms accounted for most of the MBE/WBE utilization for FTA-funded contracts.

BBC also examined MBE/WBE participation as prime contractors and subcontractors on locally-funded contracts for 2003 through 2007 (SANDAG has not applied subcontracting goals to these contracts). MBE/WBE utilization was about 13 percent, substantially below MBE/WBE utilization on FTA-funded contracts.

![Figure VI-3. MBE/WBE share of prime/subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006, and for locally-funded contracts, 2003–2007](image)

Note: Certified DBE utilization.

For more detail and results by group, see Figures E-2, E-3 and E-4 in Appendix E.

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

Share of contract dollars going to all subcontractors. Subcontracting accounted for 20 percent of total FTA-funded contract dollars after May 1, 2006 compared with 30 percent for 2003–April 2006. These data suggest the possibility that SANDAG’s change in subcontracting goals program caused prime contractors to retain more of the contract dollars and reduce their overall use of subcontractors. About the same share of locally-funded contracts was subcontracted (27%) as was FTA-funded contracts for 2003 through April 2006.

Utilization as subcontractors. Figure VI-4 examines the share of subcontract dollars going to MBE/WBEs and certified DBEs on FTA-funded contracts before and after the change in implementation of the program, and for subcontracts on locally-funded contracts for 2003 through 2007. For FTA-funded contracts, the percentage of subcontract dollars going to MBE/WBEs dropped considerably for May 2006 through December 2007. About 37 percent of subcontract dollars on FTA-funded contracts went to MBE/WBEs prior to the change in program. After the change, 10 percent of the subcontract dollars went to MBE/WBEs.

Figure VI-4. MBE/WBE share of subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006, and for locally-funded contracts, 2003-2007

Note: Certified DBE utilization.
For more detail and results by group, see Figures E-8, E-9 and E-10 in Appendix E.

Source: BBC Research & Consulting from data on SANDAG contracts.
Disparity analysis. There was no substantial underutilization of MBE/WBEs as a whole for FTA-funded contracts when SANDAG’s DBE contract goals/good faith efforts program was in place (disparity index of 91). There were, however, substantial disparities for WBEs, African American-owned firms, Hispanic American-owned firms and Native American-owned firms.

MBE/WBE utilization for FTA-funded contracts from May 2006 through December 2007 was 89 percent of what would be expected given overall MBE/WBE availability for these contracts. There continued to be substantial disparities for WBEs and African American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

Figure VI-5 compares disparity indices for specific MBE/WBE groups for FTA-funded contracts when DBE contract goals/good faith efforts were in place (darker bar) and for 20 months of FTA-funded contracts after the change in program (lighter bar).

**Figure VI-5.**
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA-funded transportation contracts, before and after May 1, 2006

Note:
Number of contracts/subcontracts analyzed is 159 for 2003–April 2006 and 77 for May 2006–Dec. 2007.
For more detail, see Figures E-2 and E-3 in Appendix E.

Source:
BBC Research & Consulting.
There were large disparities between MBE/WBE utilization and availability for subcontracts on FTA-funded contracts after the change in the DBE contract goals program. The disparity index for MBE/WBEs, overall, was 28 for subcontracts on May 2006–December 2007 FTA-funded contracts. There were disparities in subcontractor utilization for each race/ethnic/gender group of MBE/WBEs except for Asian-Pacific American-owned firms.

Turning to locally-funded contracts, MBE/WBE utilization (13%) was about one-half of what would be expected based on MBE/WBE availability for these contracts. The disparity index for MBE/WBEs on SANDAG locally-funded contracts is 49.

Figure VI-6 compares disparity indices for specific MBE/WBE groups for 2003-April 2006 FTA-funded contracts (dark bar) and 2003-2007 locally-funded contracts (lighter bar). There were disparities for each MBE/WBE group for locally-funded contracts except for Asian Pacific American-owned firms.

Figure VI-6. Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA- and locally-funded transportation contracts

Note:
Number of contracts/subcontracts analyzed was 159 for FTA-funded and 94 for locally-funded contracts.
For more detail and results, see Figure E-2 and E-4 in Appendix E.

Source:
BBC Research & Consulting.
For locally-funded contracts, disparities in the overall utilization of MBE/WBEs were particularly pronounced for construction and engineering contracts.

- **Construction contracts.** MBE/WBE utilization was 0.4 percent of the $11 million in construction contracts compared to an expected level of 23 percent based on the availability analysis. The disparity index was 2 — in other words, MBE/WBEs received approximately 2 cents out of each dollar of what would be expected based on the availability analysis. This analysis includes prime contracts and subcontracts. (Note that there were only 14 locally-funded construction contracts and subcontracts examined.)

- **Engineering-related contracts.** About $26 million in locally-funded contracts for engineering and related services was examined. MBE/WBEs received 18 percent of these dollars, lower than the benchmark for MBE/WBE utilization (28%). The disparity index was 66 — MBE/WBEs received about two-thirds of the locally-funded engineering contract dollars that would be expected based on availability.

There were substantial disparities in the utilization of WBEs, African American-owned firms, Subcontinent Asian American-owned firms and Native American-owned firms as subcontractors on SANDAG’s locally-funded contracts.

**Qualitative information.** The information from in-depth personal interviews and other sources summarized in this section and reviewed in detail in Appendix B includes perceptions by some individuals that race and gender discrimination presents barriers to minority- and women-owned firms. Others expressed the view that there were currently no disadvantages due to race or gender ownership of a business.

**b. Information about state, local, or private contracting in analogous areas where contract goals are not used. What is the extent of participation of minority or women-owned businesses in programs without goals?** The five Consortium agencies participating in the Southern California Regional Disparity Study make purchases within the same local transportation contracting market, and have operated and then discontinued DBE goals/good faith efforts programs. A combined disparity analysis from BBC’s studies for these agencies, including SANDAG, is presented here. (SANDAG comprises a very small portion of the total Consortium dollars examined.)
Overall utilization of minority- and women-owned firms. Figure VI-7 combines utilization from each of the five Consortium agencies.

- 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 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. BBC compared combined MBE/WBE utilization for Consortium agencies (by group) with the level of utilization expected based on a combined availability analysis for 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 African American- and Subcontinent Asian American-owned firms.

When examining FTA-funded contracts from the date in 2006 when agencies discontinued DBE contract goals/good faith efforts to the end of 2007, there were no overall disparities for MBE/WBEs. Figure VI-8 does indicate disparities for WBEs and African American- and Native American-owned firms (disparity indices less than 80) for this time period. Utilization was somewhat below availability for Hispanic American-owned firms (disparity index of 86, which is not a substantial disparity).

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 2003–2007 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.
For locally-funded Consortium contracts, utilization of MBE/WBEs was about 60 percent of what would be expected based on MBE/WBE availability for these contracts. Disparities were identified for each MBE/WBE group except for African American-owned firms.

Figure VI-9 compares disparity results for locally-funded contracts with results for FTA-funded contracts when DBE contract goals/good faith efforts programs were in place.

**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 goals program and 2,039 for 2003–2007 locally-funded contracts.

Source:
BBC Research & Consulting.

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**c. Race- and gender-neutral remedies available to SANDAG.** SANDAG has implemented a number of race- and gender-neutral remedies, and works as a partner in many programs such as the San Diego Contracting Opportunities Center that serve small businesses in San Diego and other parts of Southern California. SANDAG has served as a referral source for these programs and developed its own Diversity in Small Contractor Opportunities (DISCO) initiative. Figure VI-10, on the following page, describes some of these activities in the local marketplace.

In addition to its ongoing efforts and partnerships with others, there may be further neutral remedies for SANDAG to consider.

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10 Past and current SANDAG neutral efforts include (a) arranging solicitations that facilitate DBE and other small business participation, (b) sponsorship and referrals to programs concerning financing and bonding, (c) supporting other technical assistance for DBEs and small businesses, (d) communicating contracting procedures and contract opportunities to DBEs and other firms, (e) supporting mentor-protégé relationships, and (f) facilitating access to a directory of DBE businesses.
### Figure VI-10.
**Examples of small business assistance and other neutral programs available in Southern California**

<table>
<thead>
<tr>
<th>Neutral remedies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical assistance</td>
<td>Technical assistance including small business training is widely available throughout Southern California. Examples range from general assistance from providers such as SCORE to industry-specific training such as the California Construction Contracting Program. Some programs focus on market development assistance and use of electronic media and technology are available through organizations such as the Pace Business Development Center and Procurement Technical Assistance Centers.</td>
</tr>
<tr>
<td>Small business finance</td>
<td>Small business financing is available through several local agencies within Southern California. 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.</td>
</tr>
<tr>
<td>Bonding programs</td>
<td>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 offers individual counseling and training in addition to bid, performance and bond guarantees. Training on how to obtain a bond is also provided by a number of different agencies 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 on credit worthiness criteria in the bond approval process.</td>
</tr>
<tr>
<td>Mentor-protégé programs</td>
<td>The Associated General Contractors (AGC) of San Diego and the City of San Diego have created a joint mentor-protégé program in an effort to increase diversity and develop new and emerging businesses in the construction industry. Cal Mentor supports mentor-protégé relationships in the architecture and engineering industry. SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for federal contracts. The University of Southern California is starting a mentor-protégé program to assist small businesses develop the capacity to perform as subcontractors and suppliers.</td>
</tr>
<tr>
<td>Prime/subcontractor connections</td>
<td>A number of different organizations work to pair prime contractors and emerging subcontractors through networking events and local agency subcontractor outreach programs. Examples include the San Diego County Water Authority - Paths to Partnerships event and Operation Opportunity hosted by the San Diego Supplier Development Council. Other subcontractor programs include the City of Los Angeles Public Works Bureau and the City of San Diego subcontractor outreach programs.</td>
</tr>
</tbody>
</table>
Subcontracting minimum. Compared with its experience for FTA-funded contracts for 2003–April 2006, subcontracting accounted for a somewhat smaller percentage of total SANDAG FTA-funded contract dollars after May 1, 2006 (20%). After SANDAG’s change in program, prime contractors may have retained somewhat more of the contract amount and reduced their overall use of subcontractors.\footnote{From interviews with business owners and others in the local industry, the economic downturn in 2008 and 2009 may have further reduced the amount of contracts that are subcontracted out.}

SANDAG could consider an initiative similar to the Mandatory Subcontracting Minimum (MSM) program operated by the City of Los Angeles:

- For each contract above a certain dollar amount, SANDAG 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, SANDAG would 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.

- If an MSM program is adopted, SANDAG 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. A subcontracting minimum program corresponds to a neutral remedy listed in the Federal DBE Program (“requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces”).\footnote{49 CFR Section 26.51 (b)(1).}

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

SANDAG 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 LACMTA). SANDAG could partner with other agencies in Southern California to certify small businesses.

- Application of the same eligibility criteria as the State of California small business program, except that SANDAG could not limit the program to California-based firms if the program applied to FTA-funded contracts.
Small business prime contractor program. SANDAG might also evaluate whether its small business program could include measures to assist certified small businesses obtain prime contracts. Similar to the State of California’s program, SANDAG might be able to award small business preferences for certain types of contracts. For example, in evaluating proposals for professional services contracts, SANDAG might be able to include 5 evaluation points out of 100 to be awarded based on the certified small business status of a proposer. The use of preferences for small businesses participating as prime contractors is consistent with guidelines that USDOT sets forth in 49 CFR Part 26: “If it will help achieve the objective of the DBE program, a recipient may use a small business set-aside as one of its race-neutral measures.” In addition to the State of California program, the City of Los Angeles operates a small business program that SANDAG could evaluate.

SANDAG should also continue to evaluate when contracts can be divided into multiple smaller contracts. However, disparity analysis for SANDAG’s contracts and subcontracts under $100,000 (including FTA- and locally-funded contracts) showed utilization well below MBE/WBE availability for this work.

Review of sole source procurements. It may be opportune for SANDAG to assess how frequently it employs sole source procurement methods. Although BBC did not evaluate SANDAG’s justification for each sole source contract examined by the study team, the relative volume of its use merits further review by SANDAG.

BBC attempted to locate and examine each of the 87 procurements SANDAG made in 2005 through 2007 with the study scope and was able to review procurement methods for 74 of these contracts. SANDAG appeared to use sole source methods in about one-quarter of the procurements examined for 2005 through 2007. MBE/WBEs received two of the 17 sole-sourced contracts:

- Eight out of the 22 locally-funded contracts were sole-sourced, with one going to an Asian-Pacific American-owned firm; and
- Nine out of the 52 FTA-funded contracts were sole-sourced, with one awarded to a WBE.

There were no disparities in overall MBE/WBE utilization as prime contractors compared with availability for SANDAG’s FTA-funded contracts; however, any over-use of sole source contracts has the potential to negatively affect minority- and women-owned firms. Increased use of competitive procurement methods is a neutral remedy.

Review of informal pre-qualification process and other components of the procurement process for construction prime contracts. Very little SANDAG construction prime contract dollars went to MBE/WBE prime contractors other than Subcontinent Asian American-owned firms.

- No MBE/WBEs were awarded any of the 10 locally-funded construction prime contracts or any of the 14 FTA-funded construction prime contracts for May 2006 through December 2007.
- Not including contracts going to Subcontinent Asian American-owned firms, three of the 27 FTA-funded contracts for 2003–April 2006 went to MBE/WBEs, which accounted for $46,000 of the $9.5 million in prime contract dollars for this period.

Because of these results, BBC looked further into the SANDAG procurement process for construction prime contracts.

In many respects, SANDAG is limited by state law governing public works contracts, including bonding requirements. SANDAG also widely advertises its construction IFBs, including posting opportunities on its website.

Although SANDAG does not typically pre-qualify bidders, SANDAG requires the lowest three bidders on construction contracts to submit company financial information. SANDAG uses this information in the assessment of financial responsibility. SANDAG should review whether this step is necessary given the requirement that prime contractors submit a bond. If this step in the process is continued, SANDAG should ensure that it does not have an adverse effect on new or small construction businesses in general, which could negatively affect MBE/WBEs.

SANDAG may wish to collect more recent information on the use of minority- and women-owned firms as prime contractors on construction contracts and, if disparities persist for most groups, research whether construction procurement processes can be changed to offer more opportunities to small businesses including MBE/WBEs. One opportunity to investigate is whether SANDAG can make more use of RFP processes to award construction–related contracts. This could make it easier to allow consideration of small business status or other factors in contract award.

**Other SANDAG neutral measures.** Among a number of neutral measures, SANDAG continues to:

- Require prompt payment of subcontractors;
- Make bidding procedures and opportunities to bid widely known and conduct outreach to minority- and women-owned firms and other small businesses; and
- Build a list of potential bidders, including minority- and women-owned firms. (SANDAG can use the information on potential bidders developed through this disparity study to broaden its list of potential bidders.)

In addition, SANDAG can continue to sponsor and serve as a referral resource to small business assistance and other programs in Southern California. SANDAG should encourage mentor-protégé relationships in the local community, especially among larger prime contractors doing business with the organization.

**d. 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 SANDAG changed its implementation of the goals program, it no longer required contractors to commit to a certain amount of DBE participation.
e. To what extent have DBE primes participated in the recipient’s programs in the past? MBE/WBEs accounted for 19 percent of prime contract dollars on the 94 FTA-funded contracts examined from 2003 through 2007 (see Figure VI-11). Participation of certified DBEs was 12 percent of FTA-funded prime contract dollars.

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

Note:
Certified DBE utilization.
Number of prime contracts analyzed is 94 for 2003–2007.
For more detail and results by group, see Figure E-46 in Appendix E.

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

As shown in Figure VI-12, there was no disparity in the overall utilization of MBE/WBEs as prime contractors on FTA-funded contracts. Examining results by group, there were substantial disparities for WBEs and African American-, Hispanic American- and Native American-owned firms. Asian-Pacific American-owned firms received $14.4 million of the $19.2 million of prime contract dollars going to MBE/WBEs.

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

Note:
Number of prime contracts analyzed is 94 for 2003–2007.
For more detail and results by group, see Figure E-46 in Appendix E.

Source:
BBC Research & Consulting.
Section V of this report examines SANDAG’s prime contract utilization in more detail.

f. To what extent has the recipient oversubscribed its DBE goals in the past? BBC independently examined contract and subcontract awards for SANDAG’s FTA-funded contractors for the period from May 2006 through December 2007. As previously shown (see Figure VI-3), DBEs received 21 percent of contract dollars, substantially more than the 5.3 percent annual aspirational DBE goal SANDAG set for FFY 2007.

**Overall percentage to be achieved through neutral means.** For May 2006 through December 2007, there was little overall difference in SANDAG’s utilization of minority- and women-owned firms on FTA-funded compared with contracts for 2003–April 2006 when the DBE contract goals/good faith efforts program applied.

Through December 2007, SANDAG’s utilization of minority- and women-owned firms for FTA-funded contracts after its change in the DBE subcontracting goals program was 89 percent of what it would be if there were no disparities in utilization (see Figure VI-5). Depending on the level of the overall annual aspirational goal SANDAG adopts, it might consider meeting no less than 89 percent of its goal through neutral means. However, SANDAG should consider meeting substantially more (or all) of its annual aspirational goal through neutral means, in accordance with 49 CFR Section 26.51.

**Potential effect of additional subcontracting programs.** A minimum subcontracting program might have a small positive impact on overall participation of minority- and women-owned firms in SANDAG’s FTA-funded contracts. A small business subcontracting goals program could also have an impact. Relatively little of the dollars going to subcontractors for May 2006–December 2007 FTA-funded contracts went to MBE/WBEs, which might improve with a program encouraging use of certified small businesses as subcontractors.

**Possible effect of other programs.** SANDAG could consider implementing a small business program for prime contracts. BBC was unable to quantify the potential impact of this program on SANDAG’s DBE utilization from the information available in the disparity study. A trial implementation of the program could provide SANDAG more information to gauge its effectiveness.

**Minority- and women-owned firms that are not currently certified as DBEs.** SANDAG will need to develop additional mechanisms to track the effectiveness of neutral programs. In addition to reporting utilization of certified DBEs, SANDAG should track utilization of all minority- and women-owned firms. SANDAG should examine utilization as prime contractors and subcontractors on both FTA- and locally-funded contracts. Many minority- and women-owned firms are not DBE-certified. Tracking of MBE/WBEs (by group) will be necessary to gauge SANDAG’s overall success in eliminating any barriers to participation that may be due to the race/ethnicity/gender of firm ownership. This tracking begins with SANDAG coding business ownership status in its bidder/vendor data. The data developed as part of this disparity study may provide a first step towards comprehensive vendor information.

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14 Including MBE/WBEs that are self-identified.
3. Implementation of the Federal DBE Program

The Federal DBE Program requires SANDAG 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, SANDAG should consider this disparity study and additional pertinent information per 49 CFR Part 26.

Additional neutral efforts. A number of additional race- and gender-neutral efforts are discussed above. The initiatives that could have the largest immediate impact could be a small business subcontracting program and a program to assist small businesses bidding as primes.

DBE goals/good faith efforts. If after tracking the effectiveness of neutral remedies SANDAG 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 FTA indicates how local transportation agencies would operate any future DBE contract goals program in which eligibility is limited to certain race/ethnic/gender DBE groups. One approach would be for SANDAG to limit eligibility for meeting DBE contract goals to race/ethnic/gender groups for which there were substantial disparities considering overall FTA-funded prime contract and subcontract dollars when the goals/good faith efforts program was not in place. Based on the information in this report, these groups are:

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

In this example, DBEs owned by Asian-Pacific Americans would not count toward meeting a DBE contract goal, but would participate in SANDAG contracting in all other ways (for example, meeting a subcontracting minimum or potentially participating in a small business prime contractor program). SANDAG would include all DBE groups when preparing DBE participation reports.

If SANDAG were to adopt this approach, it would need to request a waiver from USDOT to limit participation in this program component to certain groups.

Over-concentration of DBEs in certain fields. BBC examined the issue of over-concentration of DBEs in certain fields per 49 CFR Part 26.33. BBC did not identify any areas of over-concentration for SANDAG.


SANDAG 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 FTA-funded and locally-funded contracts.

If SANDAG 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. SANDAG may need to consider adding certain race- and gender-conscious remedies if a solely neutral program is not effective in addressing any disparities in its utilization of minority- and women-owned firms on FTA-funded contracts.

4. Programs Applicable to Locally-funded Contracts

Neutral remedies. SANDAG could consider applying the neutral remedies explored here to its locally-funded contracts as well as FTA-funded contracts. For example, a small business subcontracting program might be applied, as needed, across areas of SANDAG contracts.

Race- and gender-based remedies. At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits SANDAG from implementing programs including race, ethnic or gender preferences related to its locally-funded contracts. However, SANDAG should monitor developments in a case involving San Francisco’s implementation of a race- and gender-conscious program for its locally-funded contracts.16 At the time of this disparity study report, the issues raised in this case were under review by the California Supreme Court. Appendix A describes the rulings in this case to date.