

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2023 THROUGH 2025

The California Department of Transportation (Caltrans) last developed an overall Disadvantaged Business Enterprise (DBE) goal in 2019 (a goal of 4.6%), which the agency used for federal fiscal year (FFY) 2020 through FFY 2022. In accordance with 49 Code of Federal Regulations (CFR) Part 26, the United States Department of Transportation's (USDOT's) Tips for Goal-Setting, and other official USDOT guidance, Caltrans proposes a new three-year overall DBE goal for FFY 2023 through FFY 2025. To determine its new overall DBE goal, Caltrans followed the two-step goal-setting methodology set forth in 49 CFR Section 26.45. Based on a disparity study that BBC Research & Consulting (BBC) completed in July 2022 (referred to herein as the 2022 Caltrans FTA Disparity Study) as well as on other relevant information, Caltrans proposes a new overall DBE goal for FFY 2023 through FFY 2025 of 6.3 percent, which is an increase from the agency's current goal.

## Step 1. Determining a Base Figure – 49 CFR Section 26.45(c)

Caltrans began the process of determining its new overall DBE goal by establishing a base figure. Consistent with USDOT guidance, Caltrans established a base figure based on information from a *custom census* availability analysis that BBC conducted as part of the 2022 Caltrans FTA Disparity Study. For the purpose of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—person of color- (POC-) 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 Federal Transit Administration- (FTA-) funded prime contracts and subcontracts that Caltrans awarded from October 1, 2017 through September 30, 2020 (i.e., the study period).<sup>1,2</sup> Caltrans has determined that the mix of the types and sizes of FTA-funded contracts it anticipates awarding in FFYs 2023 through 2025 will be similar to the mix of types and sizes of FTA-funded contracts it awarded during the study period.

**Methodology for the availability analysis.** The availability analysis focused on specific subindustries related to the types of FTA-funded contracts Caltrans awarded during the study period. Caltrans used a database of potentially available businesses that BBC developed through surveys with business establishments located in Caltrans' relevant geographic market area and that work in relevant subindustries.<sup>3</sup>

**Overview of availability surveys.** As part of the 2022 Caltrans FTA Disparity Study, BBC conducted telephone surveys with business owners and managers to identify businesses that are

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<sup>1</sup> Consistent with USDOT guidance, Caltrans considers any contract with at least \$1 of FTA funding as an *FTA-funded* contract and includes the total value of the contract in its pool of total FTA-funded contracting dollars.

<sup>2</sup> BBC defined woman-owned businesses specifically as *non-Hispanic white woman-owned businesses*. BBC grouped businesses owned by women of color with their corresponding racial/ethnic group.

<sup>3</sup> The disparity study analyses indicated that Caltrans' relevant geographic market area is the entire state of California.

potentially available for Caltrans' FTA-funded prime contracts and subcontracts. BBC began the survey process by collecting information about business establishments from Dun & Bradstreet (D&B) Marketplace listings. BBC collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most relevant to Caltrans' FTA-funded contracting.

**Information collected in availability surveys.** BBC conducted telephone surveys with the owners or managers of the identified business establishments. Survey questions covered many topics about each organization including:

- Status as a private business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Interest in performing work for Caltrans;
- Interest in performing work as a prime contractor or as a subcontractor;
- Largest prime contract or subcontract bid on or performed in the previous five years (to account for *relative capacity*);
- Company size in terms of revenues and number of employees; and
- Race/ethnicity and gender of ownership.

Information about businesses that completed surveys was entered into a database that served as a basis for the availability analysis.

**Considering businesses as potentially available.** BBC considered all businesses—regardless of the race/ethnicity or gender of the businesses' owners—to be potentially available for Caltrans' FTA-funded contracts or subcontracts if they reported possessing *all* of the following characteristics:

- a. Being a private business (as opposed to a nonprofit organization);
- b. Having performed work relevant to Caltrans FTA-funded contracting;
- c. Having bid on or performed public or private sector prime contracts or subcontracts in the past five years;
- d. Being interested in work for Caltrans;<sup>4</sup> and
- e. Having the ability to work in the relevant geographic market area.

BBC also considered the largest contract each business bid on or performed in the past (to assess *relative capacity*) to determine if the business is potentially available for specific contracts that Caltrans awarded during the study period.

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<sup>4</sup> That information was gathered separately for prime contract and subcontract work.

**Steps to calculating availability.** As part of the availability analysis, BBC collected and analyzed relevant information to develop dollar-weighted availability estimates to help Caltrans set its overall DBE goal. Dollar-weighted availability estimates represent the percentage of contracting dollars that potential DBEs would be expected to receive based on their availability for specific types and sizes of Caltrans' FTA-funded prime contracts and subcontracts (referred to collectively as *contract elements*). Only a subset of businesses in the availability database was considered potentially available for any particular contract element based on the type, size, and work type of the opportunity. BBC identified those specific characteristics of each FTA-funded prime contract and subcontract that Caltrans awarded during the study period and then, for the purposes of helping Caltrans establish a base figure, took the following steps to calculate the availability of potential DBEs for each contract element:

1. BBC identified businesses in the availability database that reported that they:
  - Are qualified and interested in performing related work in that particular role for that specific type of work for Caltrans;
  - Can serve customers in the location where the work took place; and
  - Have bid on or performed work of that size.
2. BBC then counted the number of potential DBEs (by race/ethnicity and gender) relative to all businesses in the availability database that met the criteria specified in Step 1.
3. BBC translated the numeric availability of potential DBEs for the contract element into percentage availability.

BBC repeated those steps for each FTA-funded contract element that Caltrans awarded during the study period. BBC multiplied percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of the overall availability of potential DBEs as well as an availability estimate for each relevant racial/ethnic and gender group. Figure 1 presents detailed information about the base figure for Caltrans' overall DBE goal:

- Column (a) presents the groups of potential DBEs that BBC considered as part of the base figure analysis;
- Column (b) presents the availability percentage for each group for *transit services* contract elements;
- Column (c) presents the availability percentage for each group for *professional services* contract elements;
- Column (d) presents the availability percentage for each group for *construction* contract elements;
- Column (e) presents the availability percentage for each group for *goods and services* contract elements; and

- Column (f) presents the percentage availability for each group for *all* contract elements considered together (i.e., transit services; professional services; construction; and goods and services contracts).

As presented at the bottom of column (f), the availability analysis shows that potential DBEs could be considered available for 21.6 percent of the Caltrans’ FTA-funded prime contracts and subcontract. Thus, Caltrans considers **21.6 percent as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 0.989 for transit services contracts, 0.004 for professional services contracts, 0.00 for construction contracts, and 0.006 for goods and services contracts based on the volume of dollars of FTA-funded contracts Caltrans awarded during the study period.

**Figure 1.**  
**Availability components of the base figure**  
**(based on availability of potential DBEs for FTA-funded contracts)**

| a. Potential DBEs           | b. Transit Services | c. Professional Services | d. Construction | e. Goods and Services | f. Weighted average |
|-----------------------------|---------------------|--------------------------|-----------------|-----------------------|---------------------|
| Asian Pacific American      | 0.0%                | 12.1%                    | 5.2%            | 7.6%                  | 0.1%                |
| Black American              | 12.9%               | 8.4%                     | 7.8%            | 2.6%                  | 12.8%               |
| Hispanic American           | 2.0%                | 2.5%                     | 21.7%           | 11.8%                 | 2.1%                |
| Native American             | 0.0%                | 0.0%                     | 0.0%            | 0.0%                  | 0.0%                |
| Subcontinent Asian American | 6.6%                | 6.1%                     | 5.2%            | 0.9%                  | 6.6%                |
| Non-Hispanic white woman    | 0.0%                | 16.9%                    | 6.7%            | 4.0%                  | 0.1%                |
| <b>Total potential DBEs</b> | <b>21.5%</b>        | <b>46.0%</b>             | <b>46.6%</b>    | <b>26.9%</b>          | <b>21.6%</b>        |
| <b>Industry weight</b>      | <b>98.9%</b>        | <b>0.4%</b>              | <b>0.0%</b>     | <b>0.6%</b>           |                     |

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

Source: BBC Research & Consulting availability analysis.

## Step 2. Determining if an Adjustment is Needed – 49 CFR Section 26.45(d)

After establishing the base figure, Caltrans considered relevant information to determine whether any adjustment was needed to the base figure as part of determining the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, Caltrans evaluated information about:

- Current capacity of DBEs to perform work on USDOT-funded contracting;
- 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.

**Current capacity of DBEs to perform work on USDOT-funded contracting.** USDOT’s Tips for Goal-Setting suggests that agencies should examine data on past DBE participation in their USDOT-funded contracts in recent years. As part of the 2022 Caltrans FTA Disparity Study,

BBC examined the participation of certified DBEs in FTA-funded contracts that Caltrans awarded during the study period. During that time, certified DBEs received 0.4% of dollars on Caltrans' FTA-funded contracts. The information about past DBE participation supports a downward adjustment to Caltrans' base figure. If Caltrans were to use the approach outlined by USDOT, the overall goal would be the average of the 21.6 percent base figure and the 0.4 percent past DBE participation, yielding a potential overall DBE goal of 11.0 percent.

**Any disparities in the ability of DBEs to get financing, bonding, and insurance.** BBC's analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in California do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men (for details, see Chapter 3 and Appendices C and D of the disparity study report). Any barriers to obtaining financing, bonding, and insurance might limit opportunities for POCs and women to successfully form and operate businesses in the California contracting marketplace. Any barriers that POC- and woman-owned businesses face in obtaining financing, bonding, and insurance would also place those businesses at a disadvantage in competing for Caltrans' FTA-funded prime contracts and subcontracts. Thus, information from the disparity study about financing, bonding, and insurance supports an upward adjustment to Caltrans' base figure.

**Information related to employment, self-employment, education, training, and unions.** BBC's analyses of conditions in the local contracting marketplace indicate that there are barriers that certain POC groups and women face related to human capital, financial capital, and business ownership in the California contracting marketplace. Such barriers may decrease the availability of POC- and woman-owned businesses perform the FTA-funded contracts that Caltrans awards, which supports an upward adjustment to Caltrans' base figure (for details, see Chapter 3 and Appendices C and D of the disparity study report).

**Other relevant data.** The Federal DBE Program suggests that federal funding recipients also examine "other factors" when determining whether to make any adjustments to their base figures.<sup>5</sup>

**Success of businesses.** There is quantitative evidence that certain groups of POC- and woman-owned businesses are less successful than businesses owned by non-Hispanic white men and face greater barriers in the marketplace, even after accounting for race- and gender-neutral factors (for details, see Chapter 3 and Appendix C of the disparity study report). There is also qualitative evidence of barriers to the success of POC- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects POC- and woman-owned businesses in the local contracting marketplace (for details, see Appendix D of the disparity study report). Thus, information about the success of businesses also supports an upward adjustment to Caltrans' base figure.

**Evidence from disparity studies conducted within the jurisdiction.** USDOT suggests that federal fund recipients also examine evidence from disparity studies conducted within their

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<sup>5</sup> 49 CFR Section 26.45.

jurisdictions when determining whether to make adjustments to their base figures. There have been several other disparity studies conducted for state agencies in California in recent years, including for the City of San Diego and Caltrans' Federal Highway Administration-funded contracts. However, those agencies' contracts differ substantially in terms of size and type from the FTA-funded contracts that Caltrans awarded during the study period. Therefore, the results from other disparity studies are of limited use to Caltrans in determining whether to make an adjustment to its base figure.

**Information about memorandum of understanding (MOU) agency contracts.** Caltrans acts as a pass-through agency that provides funding to subrecipient agencies to administer projects and associated contracts. Subrecipients must comply with federal procurement standards and the Federal DBE Program for contracts it awards with the use of Caltrans pass-through FTA funding. Subrecipients must also report the participation of DBEs in Caltrans-funded contracts to Caltrans. Caltrans may establish an MOU with subrecipient agencies that also receive funds directly from FTA to report their DBE participation in Caltrans-funded contracts directly to FTA. Caltrans has MOUs in place with 23 subrecipient agencies that report DBE participation directly to FTA (MOU agencies). Information about the contracts those 23 subrecipient local agencies awarded were not included in the 2022 Caltrans FTA Disparity Study or establishing Caltrans' base figure, even if they included pass-through funding from Caltrans. However, BBC examined information about the contracts that MOU agencies awarded during the study period. The study team examined the availability of potential DBEs for *all* of Caltrans' FTA-funded contracts, including those MOU agencies awarded. The availability of potential DBEs for all FTA-funded contracts considered together is 1.5 percent. Caltrans considered the types and sizes of MOU agency contracts and determined that, although some MOU agency contracts are substantially larger than those awarded directly by Caltrans and non-MOU agencies, they are similar in scope, and many are also comparable in size. Thus, information about the availability of potential DBEs for all Caltrans' FTA-funded contracts, including those MOU agencies awarded, supports a downward adjustment to Caltrans' base figure.

**Adjustment.** Caltrans has considered myriad information relevant to a potential step 2 adjustment and has decided to make a downward adjustment to its base figure. The agency has decided to make a downward adjustment for the following reasons:

- Information about marketplace conditions supports an upward adjustment, but information about Caltrans' DBE participation in recent years supports a downward adjustment.
- Information about MOU agency contracts, which are similar in scope to Caltrans' non-MOU agency contracts indicates potential DBE availability less than Caltrans' base figure, which also supports a downward adjustment.
- Caltrans believes it is important to set a realistic goal that accounts for the different information relevant to making an adjustment. Because some information relevant to a potential step 2 adjustment supports an upward adjustment and some information supports a downward adjustment, a realistic overall DBE goal is likely higher than Caltrans' past participation but lower than the agency's base figure.

Therefore, to account for the current capacity of DBEs to perform on Caltrans' FTA-funded work, Caltrans first took the average of the 21.6 percent base figure and the 0.4 percent past DBE participation, yielding an adjusted base figure of 11.0 percent. Caltrans then took the average of the adjusted base figure of 11.0 percent and the availability of potential DBEs for all FTA-funded contracts—including those awarded by MOU agencies—of 1.5 percent to yield an overall DBE goal of 6.3 percent.

## New Goal

Caltrans proposes a **new overall DBE goal of 6.3 percent** for FFYs 2023, 2024, and 2025. Caltrans' proposed overall DBE goal reflects an increase from the agency's current goal of 4.6 percent and Caltrans' commitment to achieving higher DBE participation than it has in recent years.

## Race-/Gender-Neutral and Race-/Gender-Conscious Split – 49 CFR Section 26.51 (c)

In accordance with federal regulations and USDOT guidance, Caltrans will attempt to meet the maximum feasible portion of its proposed 6.3 percent overall DBE goal through the use of race- and gender-neutral measures. Caltrans used a broad range of race- and gender-neutral measures to encourage the participation of all small businesses—including DBEs—in its FTA-funded contracts in FFY 2018 through FFY 2020 and plans on continuing the use of those measures in the future. Figure 2 presents a summary of those measures.

Caltrans did not use DBE contract goals or any other race- or gender-conscious measures in awarding the majority of its FTA-funded contracts during the study period. Caltrans used DBE contract goals in awarding just five prime contracts and subcontracts during the study period, representing \$18.5 million of \$74.5 million of FTA-funded contracting. As part of the 2022 Caltrans FTA Disparity Study, BBC examined the participation of certified DBEs in FTA-funded contracts that Caltrans awarded without the use of DBE contract goals or any other race- or gender-based measures (i.e., *no-goals* contracts). That analysis showed that certified DBEs received only 0.6 percent of dollars on no-goals contracts. Based on that information, Caltrans projects that it will achieve **0.6 percent** of its proposed DBE goal through the use of race- and gender-neutral measures. Caltrans projects that it will meet the remainder of its proposed DBE goal—**5.7 percent**—through the use of race- and gender-conscious measures (i.e., DBE contract goals).

## Waiver Request

Several seminal court cases have indicated that in order to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious program measures to those groups “that have actually suffered discrimination” within their transportation contracting industries.<sup>6,7</sup> Moreover, USDOT official guidance states that “even when discrimination is present in a state, a program is narrowly tailored only if its application is

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<sup>6</sup> *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1191, 1199, 2013 WL 1607239 (9th Cir. April 16, 2013)

<sup>7</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006)

limited to those specific groups that have actually suffered discrimination or its effects.”<sup>8</sup> As provided in 49 CFR Part 26, such guidance is “valid, and express[es] the official positions and views of the Department of Transportation ... .”<sup>9</sup>

Results from the 2022 Disparity Study indicated that most relevant business groups exhibited *substantial disparities*—that is, disparities whereby participation was less than 80 percent of availability—on key contract sets the study team examined. However, Asian Pacific American- and Native American-owned businesses did not exhibit substantial disparities on key contract sets, including on contracts awarded without the use of DBE contract goals.

Caltrans requested a waiver that will allow the agency to limit its use of race- and gender-conscious measures (i.e., DBE contract goals) to those DBE groups for which compelling statistical evidence of discrimination—that is, substantial disparities between participation and availability on Caltrans’ transportation-related contracts—exists in the relevant geographic market area. Based on results from the 2022 Caltrans FTA Disparity Study, Caltrans will limit its use of DBE contract goals to the following business groups: Black American-owned DBEs, Hispanic American-owned DBEs, Subcontinent Asian American-owned DBEs, and woman-owned DBEs. Caltrans would not consider Asian Pacific American-owned DBEs or Native American-owned DBEs as eligible to count towards DBE contract goals at this time.

Once Caltrans receives approval for its waiver request, the agency will closely monitor the participation of Asian Pacific American- and Native American-owned businesses in its transportation-related contracts. If the participation of those businesses decreases substantially, Caltrans will act immediately to withdraw the waiver.

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<sup>8</sup> United States Department of Transportation Official Questions and Answers (Q&A’s) Disadvantaged Business Enterprise Program Regulation (49 CFR 26), <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-questions-and-answers-26>

<sup>9</sup> 49 CFR Section 26.9



**Figure 2.**  
**Current Caltrans race- and gender-neutral measures**

| Race- and gender-neutral measures                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Publicizes information regarding Caltrans' contracting opportunities online and in print newspapers, trade journals, and other publications to increase awareness of opportunities for small businesses to participate on Caltrans' contracts.                        |
| Facilitates Statewide Small Business Council meetings—and regional council meetings, where applicable—to enlist the participation of small businesses and business assistance organizations to identify and remove systemic barriers to small business participation. |
| Hosts District Procurement Fairs to create opportunities for small businesses to meet Caltrans' buyers and contract managers and learn about solicitation processes and requirements.                                                                                 |
| Makes at least one District Small Business Liaisons available in each Caltrans district office to serve as a point of contact for small business-related concerns, including how to do business with Caltrans.                                                        |
| Hosts contract-specific outreach events for small businesses to provide information about a project's scope, schedule, and budget; review the solicitation process; answer questions; and provide a forum for networking.                                             |
| Publishes "look ahead" reports online for upcoming construction and architecture and engineering contracts to assist small businesses in planning for potential opportunities.                                                                                        |
| Makes a series of informational handouts and brochures available to assist small businesses in navigating Caltrans' contracting and procurement opportunities.                                                                                                        |
| Enforces prompt payment laws and requirements applicable to prime contractors and subcontractors, including small businesses.                                                                                                                                         |
| Collaborates with construction and professional services industry organizations to increase small business participation in Caltrans' contracts.                                                                                                                      |
| Provides easily accessible contracting information on Caltrans' public website.                                                                                                                                                                                       |
| Explores opportunities to break larger contracts into smaller contracts.                                                                                                                                                                                              |
| Maintains online business resource centers—such as Caltrans' Contractor's Corner—that consolidate contracting information and resources for the benefit of prospective bidders and proposers, including small businesses.                                             |
| Maintains flowcharts of Caltrans' advertising, bid opening, award, and approval processes on Caltrans' website to help small businesses navigate potential contracting opportunities.                                                                                 |
| Provides training to Caltrans' contract managers and buyers regarding opportunities for maximizing the participation of small businesses in agency contracts and procurements.                                                                                        |
| Develops and delivers training for small businesses regarding how to do business with Caltrans.                                                                                                                                                                       |
| Hosts pre-bid meetings and pre-proposal conferences to communicate contract-specific requirements and milestones to prospective bidders, including small businesses, as well as introduce small businesses to prime contractors.                                      |
| Offers the Calmentor program—a mentoring program for small architectural and engineering firms—to encourage partnerships between small businesses and established prime contractors for capacity-building purposes.                                                   |
| Provides an "opt-in" feature on Caltrans' Division of Engineering Services-Office Engineer website to allow small businesses to express their interest in working on particular projects and advertise the services they offer.                                       |
| Spreads project advertising and bid openings throughout the year to prevent overloading prime contractors and subcontractors, including small businesses.                                                                                                             |
| Maintains a general resource mailbox for small business-related concerns—smallbusinessadvocate@dot.ca.gov—that small businesses can use to ask questions, seek assistance, or request training.                                                                       |
| Establishes relationships with financial institutions, surety companies, and insurance companies to provide information and resources for small businesses interested in working on Caltrans' contracts.                                                              |
| Continues to maintain Caltrans' Bidder's List.                                                                                                                                                                                                                        |

Source: California Department of Transportation.