

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2020 THROUGH 2022

The California Department of Transportation (Caltrans) submitted its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2017 through 2019 to the Federal Transit Administration (FTA) on January 31, 2017. Caltrans based the goal—which the agency set at 4.8 percent—on information from the 2015 Caltrans FTA Disparity Study as well as information from certification lists; trade and business associations; and various chambers of commerce.

In 2018, Caltrans commissioned BBC Research & Consulting (BBC) to conduct a disparity study related to the agency's implementation of the Federal DBE Program for FTA-funded contracts, which BBC completed in May 2019 (referred to herein as the *2019 Caltrans FTA Disparity Study*). As part of the study, BBC examined whether there are any disparities between:

- The percentage of contract dollars (including subcontract dollars) that Caltrans spent with minority- and woman-owned businesses on transit-related contracts during the study period (i.e., *utilization*); and
- The percentage of transit-related contract dollars that minority- and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of Caltrans prime contracts and subcontracts (i.e., *availability*).

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

- The legal framework surrounding Caltrans' implementation of the Federal DBE Program;
- Local marketplace conditions for minority- and woman-owned businesses; and
- Contracting practices and business assistance programs that Caltrans and other agencies in its marketplace currently have in place.

Based on disparity study results, federal guidance, and relevant case law, Caltrans proposes a new overall DBE goal for FFYs 2020 through 2022 of 4.6 percent, based on an upward adjustment of the 1.7 percent base figure due to information related to marketplace conditions. To determine its new overall DBE goal, Caltrans followed federal regulations, including the two-step goal-setting methodology set forth in 49 CFR Part 26.45.

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 United States Department of Transportation (USDOT) guidance, Caltrans established a base figure based on data from a *custom census* availability analysis that BBC conducted as part of the 2019 Caltrans FTA Disparity Study. For the purposes of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—minority- and woman-owned businesses that are currently DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26.65—for FTA-funded

prime contracts and subcontracts that Caltrans awarded from October 1, 2014 through September 30, 2017 (i.e., the study period).^{1, 2} Caltrans has determined that the mix of the types and sizes of transit-related contracts that it anticipates awarding in FFYs 2020 through 2022 will be similar to the mix of types and sizes of transit-related contracts that it awarded during the study period.

Methodology for the availability analysis. The availability analysis focused on specific work areas (i.e., *subindustries*) related to the types of FTA-funded contracts that Caltrans awarded during the study period. BBC identified specific subindustries—based on 8-digit Dun & Bradstreet (D&B) industry codes—for inclusion in the availability analysis and identified the geographic areas in which Caltrans awarded the vast majority of corresponding contract dollars (i.e., the *relevant geographic market area*). BBC based its determination of the relevant geographic market area on information about where the contractors that participated in Caltrans prime contracts and subcontracts during the study period were located. The analysis indicated that, during the study period, 99% of Caltrans’ transit-related professional services and goods and services contracting dollars went to businesses with locations in California, indicating that California should be considered the relevant geographic market area for the study.

Availability surveys. The study team developed a database of potentially available businesses through telephone surveys with local business establishments within relevant subindustries to identify businesses that are potentially available for Caltrans’ FTA-funded prime contracts and subcontracts.³ BBC began the survey process by collecting information about business establishments from 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 related to the FTA-funded contracts that Caltrans awarded during the study period. BBC then contacted listed businesses to solicit their participation in the telephone surveys.

Information collected in availability surveys. The study team successfully conducted telephone surveys with the owners or managers of 243 business establishments. Survey questions addressed 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 or other local government agencies;

¹ 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.

² BBC defined woman-owned businesses specifically as *non-Hispanic white woman-owned businesses*. BBC grouped minority woman-owned businesses with their corresponding minority groups (e.g., grouping Black American woman-owned businesses with all other Black American-owned businesses). For details about BBC’s definition of woman-owned businesses, see Chapter 1 of the disparity study report.

³ The study team offered business representatives the option of completing surveys online or via fax or e-mail if they preferred not to complete surveys via telephone.

- 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;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

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

Considering businesses as potentially available. BBC considered businesses to be potentially available for Caltrans' FTA-funded prime contracts or subcontracts if they reported possessing *all* of the following characteristics in the survey:

- 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; and
- d. Being interested in work for Caltrans.⁴

BBC also considered the following information to determine if businesses were potentially available for specific contracts that Caltrans awarded during the study period:

- e. The largest contract bid on or performed in the past (to inform an assessment of *relative capacity*); and
- f. The year the business was established.

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. Only a subset of businesses in the availability database was considered potentially available for any particular prime contract or subcontract (referred to collectively as *contract elements*). BBC identified the specific characteristics of each prime contract and subcontract that the study team examined as part of the disparity study 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. For each contract element, the study team identified businesses in the availability database that reported that they:
 - Are interested in performing transit-related work in that particular role for that specific type of work (based on 8-digit D&B industry codes) for Caltrans;

⁴ That information was gathered separately for prime contract and subcontract work.

- Have bid on or performed work of that size; and
 - Were in business in the year that Caltrans awarded the contract.
2. The study team 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. The study team 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 the study team examined as part of the disparity study. BBC multiplied the 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 and estimates of availability by 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 FTA-funded *professional services* contract elements;
- Column (c) presents the availability percentage for each group for FTA-funded *goods and services* contract elements; and
- Column (d) presents the availability percentage for each group for *all* FTA-funded contract elements considered together (i.e., professional services and goods and services contracts).

Figure 1.
Availability components of the base figure

a. Potential DBEs	Availability Percentage		
	b. Professional Services	c. Goods and services	d. Weighted Average
Non-Hispanic white woman-owned	10.5 %	1.0 %	1.2 %
Asian Pacific American-owned	5.3 %	0.0 %	0.1 %
Black American-owned	2.4 %	0.1 %	0.1 %
Hispanic American-owned	3.0 %	0.1 %	0.2 %
Native American-owned	0.0 %	0.0 %	0.0 %
Subcontinent Asian American-owned	1.0 %	0.0 %	0.0 %
Total potential DBEs	22.3 %	1.2 %	1.7 %
Industry weight	2 %	98 %	

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Source: 2019 Caltrans FTA Disparity Study.

As presented at the bottom of column (d), the availability analysis shows that potential DBEs could be considered available for 1.7% of Caltrans’ FTA-funded prime contract and subcontract dollars. Thus, Caltrans considers **1.7% as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 0.02 for professional services contracts and 0.98 for

goods and services contracts based on the volume of dollars of FTA-funded contracts that Caltrans awarded in each industry during the study period.

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 its 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-assisted contracts as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.⁵

Current capacity of DBEs to perform work on USDOT-assisted contracting as measured by the volume of work DBEs have performed in recent years. 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 2019 Caltrans FTA Disparity Study, BBC examined the participation of certified DBEs in FTA-funded contracts that Caltrans and subrecipient local agencies awarded in FFYs 2015, 2016, and 2017. During that time, certified DBEs received 0.4% of dollars on Caltrans' FTA-funded contracts. That information supports a downward adjustment to Caltrans' base figure. If Caltrans uses an approach similar to what USDOT outlines in "Tips for Goals Setting" to adjust its base figure based on past DBE participation, it would take the average of its 1.7% base figure and the 0.4% past DBE participation, yielding an overall DBE goal of 1.05%.

Information related to employment, self-employment, education, training, and unions. BBC used regression analyses to investigate whether race/ethnicity or gender affects rates of self-employment—that is, business ownership—among workers in the local transit-related professional services and goods and services industries. The regression analyses allowed BBC to examine those effects while statistically controlling for various race- and gender-neutral characteristics of workers, including education and age (for details, see Chapter 2 and Appendix C of the disparity study report). The regression analyses revealed that, even after accounting for various race- and gender-neutral characteristics:

- Being Black American, Asian Pacific American, Subcontinent Asian American, or Hispanic American was associated with lower rates of business ownership than being non-Hispanic white in the professional services industry. Being a woman was also associated with lower rates of business ownership than being a man in the professional services industry; and
- Being Black American or Hispanic American was associated with lower rates of business ownership than being non-Hispanic white in the goods and services industry.

⁵ 49 CFR Section 26.45.

BBC analyzed the specific impact that barriers to self-employment have on the base figure. BBC estimated the availability of potential DBEs if minorities and women owned businesses at the same rate as non-Hispanic white men who shared similar race- and gender-neutral characteristics. BBC took the following steps to complete the analysis:

1. BBC made adjustments to availability percentages for professional services and goods and services contracts based on observed disparities in self-employment rates for minorities and women. BBC only made adjustments for those groups that exhibited statistically significant disparities in self-employment rates compared to non-Hispanic whites and men.
2. BBC then combined adjusted availability percentages for professional services contracts and goods and services contracts in a dollar-weighted manner.

Figure 2 presents the results of the analysis, which is referred to as a *but for* analysis, because it estimates the availability of potential DBEs but for the continuing effects of past race- and gender-based discrimination. Figure 3 presents the following information:

- a. Current availability.** Column (a) presents the current availability of potential DBEs by group and by industry. Each row presents the availability for each group. Before any adjustment, the availability of potential DBEs for Caltrans' FTA-funded professional services and goods and services contracts that the agency awarded during the study period is 1.7%, as shown in row (19) of column (a).
- b. Disparity indices for self-employment.** For each group that is significantly less likely than non-Hispanic white men to own professional services; or goods and services businesses, BBC estimated business ownership rates if those groups owned businesses at the same rate as non-Hispanic white men who share the same race- and gender-neutral characteristics. BBC then calculated a self-employment disparity index for each group by dividing the observed self-employment rate by the estimated self-employment rate and then multiplying the result by 100. Values of less than 100 indicate that, in reality, the group is less likely to own businesses than what would be expected for non-Hispanic white men who share the same race- and gender-neutral characteristics.

To simulate business ownership rates if minorities and women owned businesses at the same rate as non-Hispanic white men in a particular industry, BBC took the following steps:

- 1) BBC performed a probit regression analysis predicting business ownership including only workers in the dataset who were non-Hispanic white men; and
- 2) BBC then used the coefficients from that model and the mean personal characteristics of individual minority groups (or non-Hispanic white women) working in the industry to simulate business ownership for each group that was significantly less likely than non-Hispanic white men to own professional services or goods and services businesses.

BBC then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the simulated business ownership rate and then multiplying the result by 100. Values of less than 100 indicate that, in reality, the group is less likely to own businesses than what would be expected for non-Hispanic white men who share similar personal characteristics. Column (b) presents disparity indices related to self-

employment for the different racial/ethnic and gender groups. For example, as shown in row (1) of column (b), non-Hispanic white women own professional services businesses at 74 percent of the rate that one might expect based on the estimated self-employment rates of non-Hispanic white men who share similar personal characteristics.

Figure 2.
Adjustment to base figure to account for disparities in self-employment rates

Industry and group	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of base figure**
Professional services					
(1) Non-Hispanic white woman	10.5 %	74	14.2 %	12.7 %	
(2) Asian Pacific American	5.3 %	53	10.0 %	8.9 %	
(3) Black American	2.4 %	57	4.2 %	3.8 %	
(4) Hispanic American	3.0 %	67	4.5 %	4.0 %	
(5) Native American	0.0 %	n/a	0.0 %	0.0 %	
(6) Subcontinent Asian American	1.0 %	63	1.6 %	1.4 %	
(7) Potential DBEs	22.3 %	n/a	34.5 %	30.7 %	0.7 %
(8) All other businesses ***	77.7 %	n/a	77.7 %	69.3 %	
(9) Total	100.0 %	n/a	112.2 %	100.0 %	
Goods and services					
(10) Non-Hispanic white woman	1.0 %	n/a	1.0 %	1.0 %	
(11) Asian Pacific American	0.0 %	n/a	0.0 %	0.0 %	
(12) Black American	0.1 %	4	2.5 %	2.4 %	
(13) Hispanic American	0.1 %	16	0.6 %	0.6 %	
(14) Native American	0.0 %	n/a	0.0 %	0.0 %	
(15) Subcontinent Asian American	0.0 %	n/a	0.0 %	0.0 %	
(16) Potential DBEs	1.2 %	n/a	4.1 %	4.0 %	3.9 %
(17) All other businesses	98.8 %	n/a	98.8 %	96.0 %	
(18) Total	100.0 %	n/a	102.9 %	100.0 %	
(19) TOTAL	1.7 %	n/a		n/a	4.6 %

Note: Numbers rounded to nearest tenth of 1%. Numbers may not add to totals due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index.

** Components of potential step-2 adjustment were calculated as the value after adjustment and scaling to 100%, multiplied by the percentage of total FTA-funded contract dollars in each industry (professional services = 0.02 and goods and service ss = 0.98).

*** All other businesses included majority-owned businesses and minority- and woman-owned businesses that were not potential DBEs.

Source: BBC Research & Consulting and Caltrans data.

c. Availability after initial adjustment. Column (c) presents availability estimates by group and by industry after initially adjusting for statistically significant disparities in self-employment rates. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for self-employment in column (b) and then multiplying by 100. Note that BBC only made adjustments for those groups that are significantly less likely than similarly-situated non-Hispanic white men to own businesses.

- d. Availability after scaling to 100 percent.** Column (d) shows adjusted availability estimates that BBC rescaled so that the sum of the availability estimates equaled 100 percent for each industry. BBC rescaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total businesses" in column (c)—in row (9) for professional services and in row (18) for goods and services—and multiplying by 100. For example, the rescaled adjusted availability estimate for non-Hispanic white woman-owned professional services businesses shown in row (1) of column (d) was calculated in the following way: $(14.2 \% \div 112.2\%) \times 100 = 12.7\%$.
- e. Components of goal.** Column (e) shows the component of the total base figure attributed to the adjusted minority- and woman-owned availability for each industry. BBC calculated each component by taking the total availability estimate shown under "Potential DBEs" in column (d)—in row (7) for professional services and in row (16) for goods and services—and multiplying it by the proportion of total FTA-funded contract dollars for which each industry accounts (i.e., 0.02 for professional services and 0.98 for goods and services). The values in column (e) were then summed to equal the base figure adjusted for barriers in business ownership—4.6%—as shown in the bottom row of column (e). Thus, information about business ownership also supports an upward adjustment to Caltrans' base figure.

Any disparities in the ability of DBEs to get financing, bonding, and insurance. BBC's analysis of financing, bonding, and insurance revealed quantitative and qualitative evidence that minorities; women; and minority- 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 2 and Appendices C and D of the disparity study report). Any barriers to obtaining financing, bonding, and insurance might limit opportunities for minorities and women to successfully form and operate businesses in the California contracting marketplace and 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.

Other relevant data. The Federal DBE Program suggests that agencies also examine "other factors" when determining whether to make any adjustments to their base figures.⁶

Business success. There is quantitative evidence that certain groups of minority- 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 2 and Appendix C of the disparity study report). There is also qualitative evidence of barriers to the success of minority- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects minority- and woman-owned businesses in the local contracting industry (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.

⁶ 49 CFR Section 26.45.

Evidence from disparity studies conducted within the jurisdiction. USDOT suggests that federal fund recipients also examine evidence from disparity studies conducted within their jurisdictions when determining whether to make adjustments to their base figures. There have been several other disparity studies conducted for agencies in California in recent years (e.g., San Francisco Bay Area Rapid Transit District (BART), Los Angeles County Metropolitan Transportation Authority, and San Diego Association of Governments). However, those agencies' contracts differ substantially in terms of size and type from the FTA-funded contracts that Caltrans awarded during the study period. In the case of BART, the methodology that was used to conduct the study was substantially more limited than the methodology that BBC used to conduct the 2019 Caltrans FTA Disparity Study. Thus, the results from other disparity studies are of limited use to Caltrans in determining whether to make an adjustment to its base figure.

Adjustment. Caltrans considered all of the above information in considering whether to make an adjustment to its base figure. Most of the data that Caltrans considered indicated that an upward adjustment to its base figure is warranted (with the exception of past DBE participation). Because information about barriers that minorities and women face in business ownership are the most quantifiable and appear to have the clearest effects on the current availability of minority- and woman-owned businesses in the local marketplace, Caltrans has determined that the most appropriate course of action is for the organization to adjust its base figure to account for those barriers, resulting in an **overall DBE goal of 4.6%**.

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 4.6% 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 FFYs 2015-2017 and plans to continue using those measures in the future. The list on the next page presents a summary of those measures.

Caltrans and subrecipient local agencies did not use DBE contract goals or any other race- or gender-conscious measures in awarding the vast majority of their FTA-funded contracts during the study period. Subrecipient local agencies used DBE contract goals in awarding a total of only 13 prime contracts and subcontracts during the study period, representing \$4.5 million of \$1.1 billion of FTA-funded contracting. As part of the 2019 Caltrans FTA Disparity Study, BBC examined the participation of certified DBEs in FTA-funded contracts that Caltrans and subrecipient local agencies 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 0.2% of dollars on no-goals contracts. Thus, Caltrans projects that it will achieve **0.2% of its overall DBE goal through the use of race- and gender-neutral measures**, and will achieve **4.4% of its overall DBE goal through the use of race- and gender-conscious measures**.

Current Caltrans race- and gender-neutral measures

- Publicizes information regarding Caltrans's contracting opportunities online and in print newspapers, trade journals, and other publications to increase awareness of opportunities for small businesses to participate on Caltrans's 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's 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's 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's contracts.
- Provides easily accessible contracting information on Caltrans's public website.
- Explores opportunities to break larger contracts into smaller contracts.
- Maintains online business resource centers—such as Caltrans's "Contractor's Corner"—that consolidate contracting information and resources for the benefit of prospective bidders and proposers, including small businesses.
- Maintains flowcharts of Caltrans's advertising, bid opening, award, and approval processes on Caltrans's website to help small businesses navigate potential contracting opportunities.
- Provides training to Caltrans's 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 to the Caltrans's 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's contracts.

- Continues to maintain Caltrans's Bidder's List.
- Source: California Department of Transportation.

Necessity of Race- and Gender-conscious Measures

As part of the 2019 Caltrans FTA Disparity Study, BBC examined whether minority- and woman-owned businesses exhibit any disparities between their actual participation in and availability for the transit-related contracts that Caltrans and subrecipient local agencies awarded during FFYs 2015-2017. Courts take the existence of *substantial disparities* between participation and availability (i.e., disparity indices of less than 80) as inferences of discrimination affecting particular groups in the marketplace, and agencies often use such evidence as justification for the use of race- and gender-conscious measures, particularly if those disparities occurred on contracts that agencies awarded in a *race- and gender-neutral environment* (i.e., contracts they awarded without the use of race- and gender-conscious measures).^{7, 8, 9}

Figure 4 presents disparity indices for transit-related prime contracts and subcontracts that Caltrans and subrecipient local agencies awarded during the study period. For reference, a line appears at a disparity index of 100 (line of parity) and 80 (line of substantial disparity). As shown in Figure 4, overall, the participation of minority- and woman-owned businesses in Caltrans' transit-related contracts exceeded what one might expect based on the availability of those businesses for that work (disparity index of 200+). However, disparity indices varied substantially across individual groups:

- Three groups exhibited substantial disparities: non-Hispanic white woman-owned businesses (disparity index of 14), Asian Pacific American-owned businesses (disparity index of 42), and Black American-owned businesses (disparity index of 0).
- Hispanic American-owned businesses (disparity index of 200+), Native American-owned businesses (disparity index of 100), and Subcontinent Asian American-owned businesses (disparity index of 166) did not exhibit a disparity.¹⁰

Caltrans and subrecipient local agencies used DBE contract goals in awarding a very small number of transit-related contracts during the study period (13 prime contracts and subcontracts in total), so for intents and purposes, those contracts Caltrans and subrecipient local agencies awarded those contracts in a race- and gender-neutral manner. The substantial disparities that BBC observed on those contracts indicate that the use of race- and gender-conscious measures may be warranted.

⁷ Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al., 713 F.3d 1187, 1192, 1196 (9th Cir. 2013).

⁸ *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 985, 987-88 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027, 124 S. Ct. 556 (2003).

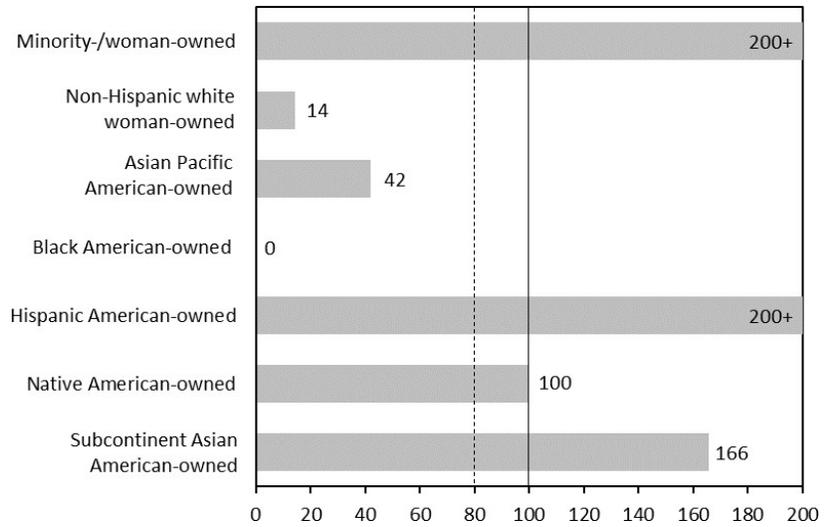
⁹ *H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al.*, 615 F.3d 233,246 (4th Cir.2010).

¹⁰ Native American-owned businesses showed a disparity index of 100, but they did not receive any dollars on Caltrans's transit-related contracts during the study nor did the availability analysis show them to be available for any of those dollars.

Figure 6.
Disparity indices by
group

Note:
 Numbers rounded to nearest whole
 number.
 For more detail, see Figure F-2 in
 Appendix F.

Source:
 BBC Research & Consulting disparity
 analysis.



The results in Figure 6 indicate that when Caltrans does not use race-conscious and gender-conscious measures, some of the relevant business groups suffer from substantial underutilization in Caltrans contracting.

Public Participation – 49 CFR Section 26.45(g)

Public participation is a key component of Caltrans’ process for setting its overall DBE goal. Caltrans made information about the 2019 Caltrans FTA Disparity available to the public through its website and had a 30-day comment period from May 31, 2019 through June 30, 2019.