

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2022 THROUGH 2024

The Los Angeles County Metropolitan Transportation Authority (Metro) last developed an overall Disadvantaged Business Enterprise (DBE) goal in 2018, which the agency used for federal fiscal year (FFY) 2019 through FFY 2021 (a goal of 27%). 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, Metro based its goal and goal methodology on a disparity study that BBC Research & Consulting (BBC) completed in September 2018 (referred to herein as the 2017 Disparity Study) as well as on other relevant information. Based on disparity study results, information about USDOT-assisted projects the agency anticipates awarding, and federal guidance, Metro proposes a new three-year overall DBE goal for FFY 2022 through FFY 2024. To determine its new overall DBE goal, Metro followed the two-step goal-setting methodology set forth in 49 CFR Section 26.45.

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

Metro began the process of determining its overall DBE goal by first establishing a base figure. Consistent with USDOT guidance, Metro established a base figure based on Federal Transit Administration (FTA)-assisted contracts that the agency anticipates awarding in FFY 2022 through FFY 2024.<sup>1</sup> Metro projects that it will award nearly \$970 million worth of FTA-assisted construction, professional services, and goods and services contracts in FFY 2022 through FFY 2024. Metro also projected the amount of anticipated subcontracting associated with future projects based on information about similar projects that the agency previously awarded. Metro evaluated each anticipated project and assigned it a specific work type (i.e., *subindustry*) based on the 2017 Disparity Study. For a full list of the work types included in the Step 1 analysis, see Appendix E of the 2017 Disparity Study report.

After assigning subindustries, Metro used data from a *custom census* availability analysis that BBC conducted as part of the 2017 Disparity Study to determine the availability of minority- and woman-owned businesses working in each relevant subindustry (for details, see Chapter 5 and Appendix E of the 2017 Disparity Study report). 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 DBE-certified or appear they could be DBE-certified based on revenue requirements described in 49 CFR Section 26.65.

**Methodology for the availability analysis.** The availability analysis focused on specific subindustries related to the types of FTA-funded contracts that Metro anticipates awarding in FFY 2022 through FFY 2024. Metro used a database of potentially available businesses that BBC

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

developed through surveys with business establishments that are located in Metro’s relevant geographic market area and that work in relevant subindustries.<sup>2</sup>

**Overview of availability surveys.** As part of the 2017 Disparity Study, BBC conducted telephone surveys with business owners and managers to identify businesses that are potentially available for Metro’s FTA-assisted prime contracts and subcontracts.<sup>3</sup> 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 Metro 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 Metro;
- 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*); 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 FTA-assisted contracts Metro anticipates awarding in FFY 2022 through FFY 2024 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 Metro FTA-funded contracting;
- c. Having bid on or performed public or private sector prime contracts or subcontracts in the past five years;

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<sup>2</sup> The disparity study analyses indicated that Metro’s relevant geographic market area is Los Angeles County.

<sup>3</sup> BBC offered business representatives the option of completing surveys via fax or e-mail if they preferred not to complete surveys via telephone.

- d. Being interested in work for Metro;<sup>4</sup> and
- e. Having the ability to work in the relevant geographic market area.

BBC also considered the largest contract that 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 Metro anticipates awarding in FFY 2022 through FFY 2024.

**Steps to calculating availability.** As part of the availability analysis, BBC collected and analyzed relevant information to develop dollar-weighted availability estimates to help Metro set its overall DBE goal. BBC used the availability database from the 2017 Disparity Study to determine availability on the FTA-assisted contracts and subcontracts that Metro anticipates awarding in FFY 2022 through FFY 2024. 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 FTA-assisted contracts that Metro anticipates awarding in FFY 2022 through FFY 2024. Only a subset of businesses in the availability database was considered potentially available for any particular contract opportunity based on the type, size, and work type of the opportunity. BBC identified those specific characteristics of each FTA-assisted contract opportunity that Metro anticipates awarding in FFY 2022 through FFY 2024 and then, for the purposes of helping Metro establish a base figure, took the following steps to calculate the availability of potential DBEs for each contract opportunity:

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 Metro;
  - Are able to serve customers in the relevant geographic market area; 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 opportunity into percentage availability.

BBC repeated those steps for each FTA-assisted contract opportunity that Metro anticipates awarding in FFY 2022 through FFY 2024. BBC multiplied percentage availability for each contract opportunity by the dollars associated with the contract opportunity, added results across all contract opportunities, and divided by the total dollars for all contract opportunities. 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 2 presents detailed information about the base figure for Metro’s overall DBE goal:

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

- 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 anticipated FTA-funded *construction* contract opportunities;
- Column (c) presents the availability percentage for each group for anticipated FTA-funded *professional services* contract opportunities;
- Column (d) presents the availability percentage for each group for anticipated FTA-funded *goods and services* contract opportunities; and
- Column (e) presents the availability percentage for each group for *all* anticipated FTA-funded contract opportunities considered together (i.e., construction; professional services; and goods and services contracts).

As presented at the bottom of column (e), the availability analysis shows that potential DBEs could be considered available for 22.6 percent of the FTA-funded contracts that Metro anticipates awarding in FFY 2022 through FFY 2024. Thus, Metro considers **22.6 percent as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 0.49 for construction contracts; 0.13 for professional services contracts; and 0.38 for goods and services contracts, based on the volume of FTA-funded contracts that Metro anticipates awarding in FFY 2022 through FFY 2024.

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

Potential DBEs	Availability Percentage			Weighted average
	Construction	Professional Services	Goods and services	
Black American owned	4.4 %	3.8 %	4.8 %	4.4 %
Asian Pacific American owned	0.7	1.7	1.8	1.2
Subcontinent Asian American owned	0.1	0.4	0.5	0.3
Hispanic American owned	12.6	2.1	13.4	11.5
Native American owned	0.0	0.0	1.5	0.6
White woman owned	0.4	6.8	9.3	4.6
<b>Total potential DBEs</b>	<b>18.1 %</b>	<b>14.8 %</b>	<b>31.2 %</b>	<b>22.6 %</b>
<b>Industry weight</b>	<b>49 %</b>	<b>13 %</b>	<b>38 %</b>	

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

Source: BBC Research & Consulting availability analysis and Metro data.

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

After establishing the base figure, Metro 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, Metro evaluated information about:

- Current capacity of DBEs to perform work on USDOT-assisted 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-assisted 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. USDOT further suggests that agencies should choose the median level of annual DBE participation for those years as the measure of past participation. According to Metro’s Uniform Reports of DBE Awards or Commitments and Payments (Uniform Reports), median DBE participation in the agency’s FTA-assisted contracts from FFY 2016 through FFY 2020 was 23.5 percent, which is similar to Metro’s base figure. Figure 2 presents past DBE participation based on Metro’s Uniform Reports.

**Figure 2.**  
**Past DBE participation in FTA-**  
**funded contracts, FFY 2016-2020**

Source:  
 Metro’s Uniform Reports.

FFY	DBE Attainment	Annual DBE Goal	Difference From Goal
2016	13.8%	26%	-12.2%
2017	9.5%	26%	-16.5%
2018	23.5%	26%	-2.5%
2019	24.6%	27%	-2.4%
2020	24.5%	27%	-2.5%

The information about past DBE participation supports a slight upward adjustment to Metro’s base figure. If Metro were to use the approach outlined by USDOT, the overall goal would be the average of the 22.6 percent base figure and the 23.5 percent median past DBE participation, yielding a potential overall DBE goal of 22.8 percent.

**Any disparities in the ability of DBEs to get financing, bonding, and insurance.** BBC’s analysis of access to financing, bonding, and insurance revealed quantitative and qualitative evidence that minorities; women; and minority- and woman-owned businesses in Los Angeles County 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 minorities and women to successfully form and operate businesses in the Los Angeles County contracting marketplace and place minority- and woman-owned businesses at a disadvantage in competing for Metro’s FTA-funded contracts. Thus, information from the disparity study about financing, bonding, and insurance supports an upward adjustment to Metro’s base figure.

**Information related to employment, self-employment, education, training, and unions.** BBC used regression analyses to determine whether the race/ethnicity or gender of workers is related to self-employment, that is, the likelihood of them owning businesses in the local marketplace. The regression analyses allowed BBC to examine those effects while statistically controlling for various personal characteristics of workers, including education and

age (for details, see Chapter 3 and Appendix C of the disparity study report). The regression analyses revealed that, even after accounting for various personal characteristics:

- Black Americans, Hispanic Americans, and women are significantly less likely than non-Hispanic whites and men to own construction businesses;
- Black Americans and women are significantly less likely than non-Hispanic whites and men to own professional services businesses; and
- Black Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Hispanic Americans are significantly less likely than non-Hispanic whites to own goods and services businesses.

BBC then analyzed the specific impact that barriers to business ownership have on the base figure. That is, 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 personal characteristics. BBC took the following steps to complete the analysis:

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

Figure 3 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. The rows and columns of Figure 3 present the following information from the *but for* analysis:

**Figure 3.**  
**Adjustment to base figure to account for disparities in business ownership 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**
<b>Construction</b>					
(1) Black American	4.4 %	70	6.2 %	6.0 %	
(2) Asian Pacific American	0.7	n/a	0.7	0.6	
(3) Subcontinent Asian American	0.1	n/a	0.1	0.1	
(4) Hispanic American	12.6	88	14.4	13.8	
(5) Native American	0.0	n/a	0.0	0.0	
(6) White woman	0.4	44	0.9	0.9	
(7) Potential DBEs	18.1 %	n/a	22.2 %	21.4 %	10.4 %
(8) All other businesses ***	81.9	n/a	81.9	78.6	
(9) <b>Total</b>	<b>100.0 %</b>	n/a	<b>104.1 %</b>	<b>100.0 %</b>	
<b>Professional services</b>					
(10) Black American	3.8 %	57	6.6 %	6.4 %	
(11) Asian Pacific American	1.7	n/a	1.7	1.7	
(12) Subcontinent Asian American	0.4	n/a	0.4	0.4	
(13) Hispanic American	2.1	n/a	2.1	2.0	
(14) Native American	0.0	n/a	0.0	0.0	
(15) White woman	6.8	87	7.8	7.5	
(16) Potential DBEs	14.8 %	n/a	18.7 %	18.0 %	2.4 %
(17) All other businesses	85.2	n/a	85.2	82.0	
(18) <b>Total</b>	<b>100.0 %</b>	n/a	<b>103.9 %</b>	<b>100.0 %</b>	
<b>Goods and services</b>					
(19) Black American	4.8 %	35	13.6 %	11.9 %	
(20) Asian Pacific American	1.8	88	2.0	1.8	
(21) Subcontinent Asian American	0.5	53	1.0	0.9	
(22) Hispanic American	13.4	73	18.3	16.0	
(23) Native American	1.5	n/a	1.5	1.3	
(24) White woman	9.3	n/a	9.3	8.1	
(25) Potential DBEs	31.2 %	n/a	45.6 %	39.9 %	15.0 %
(26) All other businesses	68.8	n/a	68.8	60.1	
(27) <b>Total</b>	<b>100.0 %</b>	n/a	<b>114.5 %</b>	<b>100.0 %</b>	
(28) <b>TOTAL</b>	<b>22.6 %</b>	n/a		n/a	<b>27.9 %</b>

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 percent, multiplied by the percentage of total FTA-funded contract dollars in each industry (construction = 0.49, professional services = 0.13, and goods and services= 0.38).

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

Source: BBC Research & Consulting and Metro data.

- 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 the FTA-assisted contracts that Metro anticipates awarding in FFY 2022 through FFY 2024 is 22.6 percent, as shown in row (28) of column (a).
- b. **Disparity indices for self-employment.** For each group that is significantly less likely than non-Hispanic white men to own construction; 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 personal characteristics. 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), Black Americans own construction businesses at 70 percent of the rate that one might expect based on the estimated business ownership rates of non-Hispanic white men who share similar personal characteristics.
- c. **Availability after initial adjustment.** Column (c) presents availability estimates by group and by industry after initially adjusting for statistically significant disparities in business ownership rates. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership 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 construction, in row (18) for professional services, and in row (27) for goods and services—and multiplying by 100. For example, the rescaled adjusted availability estimate for Black American-owned construction businesses shown in row (1) of column (d) was calculated in the following way:  $(6.2 \% \div 104.1\%) \times 100 = 6.0\%$ .
- 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 construction, in row (16) for professional services, and in row (25) for goods and services—and multiplying it by the proportion of total anticipated FTA-funded contract dollars for which each industry accounts (i.e., 0.49 for construction, 0.13 for professional services, and 0.38 for goods and services). For example, BBC used the 21.4 percent shown in row (7) of column (d) for construction and multiplied it by 0.49 for a result of 10.4 percent (see row (7) of column (e)). The values in column (e) were then



summed to equal the base figure adjusted for barriers in business ownership—27.9 percent—as shown in the bottom row of column (e).

**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 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 3 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 Metro’s 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 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 (e.g., San Francisco Bay Area Rapid Transit District (BART), the California Department of Transportation, San Francisco Municipal Transportation Agency, and the San Diego Association of Governments). However, those agencies’ contracts differ substantially in terms of size and type from the FTA-funded contracts that Metro awarded during the study period. In the case of BART, the methodology that was used is substantially more limited than the methodology that BBC used to conduct the 2017 LA Metro Disparity Study. Therefore, the results from other disparity studies are of limited use to Metro in determining whether to make an adjustment to its base figure.

**Adjustment.** Metro considered all of the above information in considering whether to make an adjustment to the base figure and has decided to make upward adjustment to its base figure that specifically accounts for barriers that minorities and women face related to business ownership in the local marketplace. Metro has decided to base its adjustment specifically on that factor, because it has clear, direct, and quantifiable effect on the availability of minority- and woman-owned businesses for Metro work, and making an upward adjustment reflects Metro’s commitment to remedying the continuing effects of past race- and gender-based discrimination in the marketplace. Thus, Metro has decided to use potential DBE availability that has been adjusted for disparities in business ownership rate as describe above. Doing so yields an **overall DBE goal of 28 percent**, after rounding, for FFY 2022 through FFY 2024.

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

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

In accordance with federal regulations and USDOT guidance, Metro will attempt to meet the maximum feasible portion of its proposed 28 percent overall DBE goal through the use of race- and gender-neutral measures. Metro 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 2016 through FFY 2020 and plans on continuing the use of those measures in the future. Metro’s race- and gender-neutral efforts can be classified into four categories:

- Advocacy and outreach efforts;
- Technical assistance programs;
- Capital, bonding, and insurance assistance;
- Prompt payment policies; and
- Small business preference/set-aside.

**Advocacy and outreach efforts.** Metro participates in various advocacy and outreach efforts including hosting DBE workshops and using communications that are targeted specifically to disadvantaged businesses.

**Communications.** Metro communicates with DBEs through email, its Vendor Portal, and its DBE newsletter. Metro uses its Vendor Portal and its newsletter to announce contracting opportunities, special events, policy changes, and new DBE program measures.

**Networking events and workshops.** Metro hosts various events and workshops for DBEs. Some of those events include Meet the Prime, Meet the Project Managers and Buyers, Salute to Small Business Celebration, and other signature outreach events.

**Technical assistance programs.** Metro provides an online business toolkit which includes web tutorials for DBEs that cover topics such as how to register as a vendor, the process of bidding on Metro contracts, contract compliance reporting, and certification processes.

**Capital, bonding, and insurance.** Metro established a Commercial Insurance Broker Panel which assists businesses lacking the required insurance coverages. The panel is available to businesses and contractors through the Transportation Business Advisory Council (TBAC), small business outreach events, and Metro’s small business orientation classes.

**Prompt payment policies.** Metro has policies in place to help ensure prompt payment to subcontractors. Prime contractors are required to pay their subcontractors within 7 days after receipt of payment from Metro.

**Small business enterprise (SBE) program.** In 1997, Metro started their SBE program to comply with California’s Proposition 209, which prohibits explicit consideration of race or gender in the award of state- and locally-funded contracts.

**Small business set-aside program.** Metro’s small business set-aside program started in 2014 and enables small businesses to compete only against other small businesses for prime contracts up to \$5 million, as well as for informal projects under \$100,000. Only Metro-certified SBEs can participate in the program.

Metro considered the race- and gender-neutral program measures that it currently implements and its DBE participation as the result of those measures during FFY 2018 through FFY 2020. Based on Metro’s Uniform Reports, median DBE participation as the result of race- and gender-neutral efforts for FFY 2018 through FFY 2020 was 3.6 percent. Based on that information, Metro projects that it will be able to meet **3.6 percent** of its proposed DBE goal for FFY 2022 through FFY 2024 through the use of race- and gender-neutral measures. Metro projects that it will meet the remainder of its proposed 28 percent overall DBE goal—**24.4 percent**—through the use of race- and gender-conscious measures (i.e., DBE contract goals).

**Necessity of race-conscious measures.** Metro used race- and gender-conscious DBE subcontracting goals on many contracts during study period that BBC examined as part of the 2017 LA Metro Disparity Study to encourage the participation of disadvantaged business enterprises. The disparity study compared disparity analysis results between contracts that Metro awarded with the use of DBE subcontracting goals (goals contracts) and contracts that Metro awarded without the use of DBE subcontracting goals (no-goals contracts). Examining participation in no-goals contracts provides useful information about outcomes for minority- and woman-owned businesses on contracts that Metro awarded in a race-neutral and gender-neutral environment and whether there is evidence that certain groups face any discrimination or barriers as part of Metro’s contracting.<sup>6,7,8</sup>

Figure 4 presents 2017 disparity analysis results separately for goals contracts and no-goals contracts. As shown in Figure 4, overall, minority- and woman-owned businesses exhibited better outcomes on goals contracts than on no-goals contracts. Whereas minority- and woman-owned businesses showed a substantial disparity on no-goals contracts (disparity index of 53), they did not show a substantial disparity on goals contracts (disparity index of 96). Results for individual groups indicated that:

- Only Black American-owned business (disparity index of 64) showed substantial disparities on goals contracts.
- All groups except Subcontinent Asian American-owned businesses showed substantial disparities on no-goals contracts.

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<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al., 615 F.3d 233,246 (4th Cir. 2010).

**Figure 4.**  
**Disparity indices for goals**  
**and no-goals contracts**

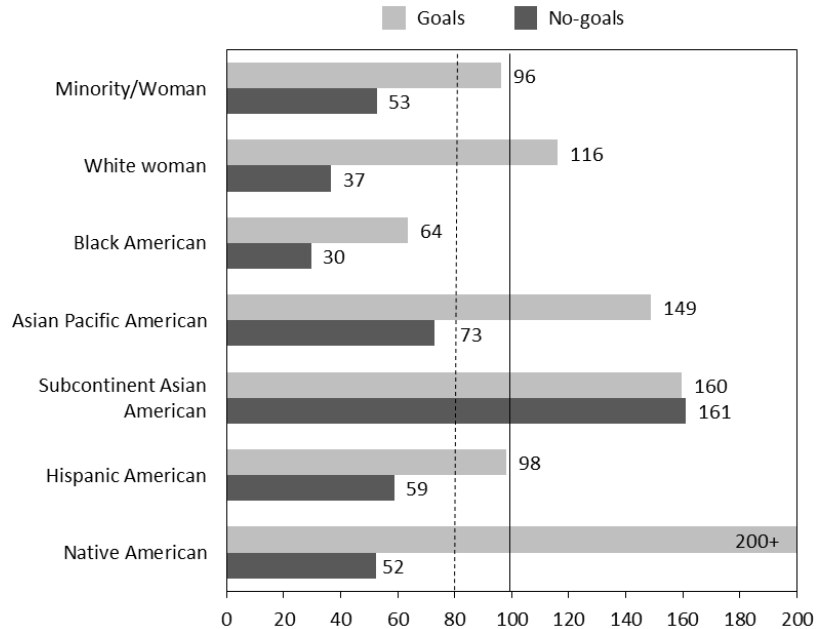
Note:

The study team analyzed 5,293 contract elements to which subcontracting goals applied. The study team analyzed 6,896 contract elements to which no subcontracting goals applied.

For more detail, see Figures F-14 and F-15 in Appendix F of the 2017 LA Metro Disparity Study.

Source:

2017 LA Metro Disparity Study.



The results presented in Figure 4 indicate that Metro’s use of DBE goals is effective in encouraging the participation of minority- and woman-owned businesses in its contracts. Moreover, those results indicate that when Metro does not use race-conscious and gender-conscious measures, most relevant business groups suffer from substantial underutilization in Metro contracting.

## 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>9,10</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 limited to those specific groups that have actually suffered discrimination or its effects.”<sup>11</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>12</sup>

Results from the 2017 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 that the study team examined. However, Subcontract Asian

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

<sup>10</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)

<sup>11</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>12</sup> 49 CFR Section 26.9

American-owned businesses did not exhibit substantial disparities on key contract sets, including on no-goals contracts as presented above.

Metro submitted a waiver request to FTA in July 2018 for the Department of Transportation Office of the Secretary review and approval to allow Metro 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 Metro’s transportation-related contracts—exists in the relevant geographic market area. Based on results from the 2017 Disparity Study, Metro requested to limit its use of DBE contract goals to the following business groups: Black American-owned DBEs, Hispanic American-owned DBEs, Native American-owned DBEs, Asian Pacific American-owned DBEs, and woman-owned DBEs. Metro would not consider Subcontinent Asian American-owned DBEs as eligible to count towards DBE contract goals at this time.

Should Metro receive approval for its waiver request, the agency will closely monitor the participation of Subcontinent Asian American-owned businesses in its transportation-related contracts. If the participation of Subcontinent Asian American-owned businesses decreases substantially, Metro will act immediately to withdraw the waiver. Metro intends to request 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 Metro’s transportation-related contracts—exists in the relevant geographic market area. Based on results from the 2017 Metro Disparity Study, Metro will request to limit its use of DBE contract goals to the following business groups: Black American-owned DBEs, Hispanic American-owned DBEs, Native American-owned DBEs, Asian Pacific American-owned DBEs, and woman-owned DBEs. Metro would not consider Subcontinent Asian American-owned DBEs as eligible for DBE contract goals at this time.

Metro will notify the contracting community of any change to the implementation of contract-specific goals. Metro will closely monitor the participation of Subcontinent Asian American-owned businesses in its transportation-related contracts. If the participation of Subcontinent Asian American-owned businesses decreases substantially during the goal period, Metro will act immediately to withdraw the waiver.

### **Public Participation – 49 CFR Section 26.45(g)**

Public participation is a key component of Metro’s process for setting its overall DBE goal. Metro made information about the proposed goal available to the public through their website posted on May 13, 2021 beginning a 30-day comment period from May 13, 2021 through June 13, 2021. Metro held three virtual public hearings on May 25<sup>th</sup>, 27<sup>th</sup> and on June 3<sup>rd</sup>, 2021. Additionally, Metro presented the goal and goal methodology report at June 3<sup>rd</sup> TBAC monthly meeting. Comments were also available for submission in writing by email at [LAMetroGandM@bbcresearch.com](mailto:LAMetroGandM@bbcresearch.com) or [Goalcomment@metro.net](mailto:Goalcomment@metro.net).