November 4, 2015

Honorable Kevin L. Faulconer, Mayor
City of San Diego
202 C Street, MS 11A
San Diego, CA 92101

Dear Honorable Mayor Faulconer:

On March 4, 2015, the Citizens' Equal Opportunity Commission (CEOC) submitted the enclosed letter with attachments to your office. We were subsequently able to meet with your Policy and Communications Coordinator, Marshall Anderson, on March 24, 2015. We respectfully request a written response to the issues discussed at this meeting. We also want to thank you for your efforts to amend the Municipal Code as noted below in number 2.

During our meeting we identified and discussed several requests that the CEOC has made to improve equal opportunity in City contracting.

They are as follows:

1. Request for a Disparity Study: We request that a disparity study be prepared that provides an analytical approach to identifying where gaps exist in City contracting with traditionally underrepresented groups. A Disparity Study is essential to establishing the current status of contracting with the City, as well as providing guidance on future actions to improve equal opportunity for those small businesses that seek to contract with the City. We respectfully request the timing of when a study like this could be undertaken by the City.

2. Amend the City's Municipal Code CEOC section to include Women and Disabled Veterans: We request that women and disabled veterans be added to section 26.16 of the City's Municipal Code. Although progress has been made, Women and Disabled Veterans are still underrepresented in contracting with the City. They are vital part of our community and should be listed as a class under the purview of the Citizen's Equal Opportunity Commission. Thank you for your current efforts to achieve this change to the Municipal Code.

3. Request improvements to the bidding and contracting process by all Contracting Departments: There are ongoing barriers to bidding and contracting with the City that continue to limit access and successful participation by small businesses. We have provided a list of such barriers in Attachment 2 of our letter dated March 4, 2015. In order to maximize bidding

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opportunities for all firms, the process of bidding and contracting needs to be assessed to identify areas which may be improved to make the process easier, predictable and supportive of small businesses.

4. We request increased staffing for the EOCP Division: The Mayor has committed to increasing opportunities for all San Diegans. The EOCP Division is at the forefront of this effort. As such, we have identified that existing staffing levels at the EOCP are not sufficient to carry out the Mayor's mission. There are several activities that are essential to a successful Equal Opportunity Program. They are to:

1) identify the current status of small business participation and strategies to improve participation levels;
2) outreach to small businesses to encourage them to participate in City contracting;
3) identify ways to mentor and train small businesses; and
4) support small businesses once they contract with the City and help them overcome obstacles to contracting with the City.

The current EOCP staff is performing extremely well with the limited staff allotted. But, it is clear that they do not have sufficient staffing to meet all of these goals and also do the day-to-day work of evaluating and coordinating bid, contract and labor compliance. One example is that since the various computer tracking systems can't transfer data between them, the data about actual dollars paid to E/SLBE and DBEs must be cross-referenced manually. This takes many staff hours to perform this task and so this data is only available once a year. Since a computer solution is not in the near future and there is a great need to understand the status of small business participation, increased staffing is a recommended solution. This is only one example of the need to increase the EOCP staff.

We are committed to supporting you and your initiative to create One San Diego and will continue to do our part to make it a reality. We look forward to getting your written response to our letter of March 4, 2015, as well as to the requests that we discussed with Mr. Anderson during our March 24 meeting.

Thank you in advance for your time and consideration.

Sincerely,

Laura Warner
Chair

Kristine M. Custodio
Vice Chair

Enclosures: Letter to Mayor Faulconer dated March 4, 2015

cc: City Council Members
Ronald H. Villa, Deputy Chief Operating Officer, MS 9A
Kristina Peralta, Director, Purchasing & Contracting Department, MS 56P
Henry Foster III, Program Manager, Equal Opportunity Contracting, MS 56P
Citizens' Equal Opportunity Commission

THE CITY OF SAN DIEGO

March 4, 2015

Honorable Kevin L. Faulconer, Mayor
City of San Diego
202 C Street, MS 11A
San Diego, CA 92101

Dear Honorable Mayor Faulconer:

The duties and functions of the Citizens' Equal Opportunity Commission (CEOC) are to advise the Mayor, City Council, Civil Service Commission, and other agencies of the City government regarding the progress being made in the City of San Diego's Equal Opportunity Contracting Program (EOCP). Additionally, the CEOC is tasked with advising and making recommendations to the City regarding the EOCP that the Commission deems appropriate.

In order for the Commission to dutifully carry out its charge in evaluating the efficacy of the EOCP, baseline data must be gathered to provide recommendations to the San Diego City Council.

The CEOC has reviewed the 2014 San Diego Association of Governments (SANDAG) Disparity Study. The enclosed Executive Summary of the study (Attachment 1) states that the disparity analysis indicates that nearly all minority and women-owned business (MBE/WBE) groups exhibit substantial disparities in contract awards. The CEOC needs similar baseline data to establish benchmarks for the complete review from advertising to award of the EOCP contracting process.

In addition, changes need to be made to Municipal Code Section 26.16 (b) to include women and disabled veterans. This commission respectfully requests sponsorship of this endeavor by your office to facilitate an amendment to the Municipal Code to make it more inclusive.

Finally, the CEOC has reviewed the bid and contracting processes. Despite ongoing efforts made by City staff to improve the contracting process, there are still ongoing issues and barriers that make contracting with the City risky, time consuming and expensive for ELBE/SLBE firms. These issues also exist for large firms that often subcontract work to ELBE/SLBE firms. The Commission requests that these bid and contracting barriers be addressed and for Huron to conduct an efficiency review of the Department of Public Works and interdepartmental contracting protocols. A list of identified bid and contracting barriers is provided for your review and consideration (Attachment 2).

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The Commission currently presents a formal review of the SLBE program, in conjunction with EOCP staff, to City Council and the Mayor's Office on an annual basis. It is recommended that our assessments be made semi-annually because changes to the program should be addressed more frequently than once a year.

We are sure you will take our requests under advisement so that the CEOC continues to be one of the most effective commissions in San Diego. The leadership of the CEOC would like to schedule a meeting to review these recommendations.

Thank you in advance for your time and consideration. We look forward to hearing from you.

Sincerely,

Stampp Corbin
Chair

Enclosures:
1. SANDAG Disparity Study Executive Summary
2. List of Contracting Barriers

cc: City Council Members
Scott Chadwick, Chief Operating Officer, MS 9A
Stacey LoMedico, Assistant Chief Operating Officer, MS 9A
Ronald H. Villa, Deputy Chief Operating Officer, MS 9A
Dennis Gakunga, Director, Purchasing & Contracting Department, MS 56P
Henry Foster III, Program Manager, Equal Opportunity Contracting, MS 56P
Citizens' Equal Opportunity Commission

CHAPTER ES.

Executive Summary

CHAPTER ES.
Executive Summary

The federal government requires transportation agencies that receive U.S. Department of Transportation (USDOT) funds to implement the Federal Disadvantaged Business Enterprise (DBE) Program. The Federal DBE Program is a program that is designed to encourage the participation of minority- and women-owned businesses (MBE/WBEs) in transportation contracting. Implementation of the program is guided by regulations in 49 Code of Federal Regulations (CFR) Part 26, USDOT guidance, and relevant court decisions.

The San Diego Association of Governments (SANDAG) receives USDOT funds through the Federal Transit Administration (FTA), and thus, must implement the Federal DBE Program.[1] SANDAG retained BBC Research & Consulting (BBC) to conduct a "disparity study" to inform its implementation of the Federal DBE Program. The primary objective of the study was to examine whether there were any disparities between SANDAG's utilization of MBE/WBEs on its transit-related transportation contracts and the availability of those businesses to perform that work.[2] The study provided information that SANDAG might consider in:

- Setting its overall DBE goal;
- Determining the portion of the goal that can be met through the use of race- and gender-neutral measures and, if necessary, race- and gender conscious measures; and
- If applicable, determining which groups would be eligible for any race- and gender-conscious measures.

Analyses in the 2014 Disparity Study

In addition to measuring potential disparities between MBE/WBE utilization and availability on SANDAG transportation contracts, the disparity study examined other quantitative and qualitative information related to the legal framework surrounding SANDAG's implementation of the Federal DBE Program; local marketplace conditions for MBE/WBEs and for other small businesses; and contracting practices and business assistance programs that SANDAG and other agencies currently have in place.

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal requirements related to the Federal DBE Program and an assessment of any state requirements concerning the implementation of the Federal DBE Program.

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[1] SANDAG also receives funding from the Federal Highway Administration (FHWA) as a subrecipient of Caltrans. SANDAG is required to use Caltrans' implementation of the Federal DBE Program when administering FHWA-funded contracts. Therefore, this study does not include FHWA-funded contracts.

[2] The study team considered businesses as MBE/WBEs if they were owned and operated by minorities or women, regardless of whether they were certified as DBEs or as MBE/WBEs. In this study, "certified DBEs" refers to those businesses that are specifically certified as such through the California Unified Certification Program.

- BBC conducted quantitative analyses of the success of minorities, women, and MBE/WBEs throughout the local transportation contracting industry.[3] In addition, the study team collected qualitative information about potential barriers that small businesses and MBE/WBEs face in the local transportation contracting industry through in-depth anecdotal interviews and public meetings.
- BBC analyzed the percentage of MBE/WBEs that are available (i.e., "ready, willing, and able") to perform on SANDAG transit-oriented prime contracts and subcontracts. That analysis was based on telephone surveys that the study team completed with 2,617 local businesses that work in industries related to the types of transit-related transportation contracts that SANDAG awards. The study team attempted telephone surveys with every business establishment that it identified as doing work that is relevant to SANDAG transportation contracting.
- BBC analyzed the dollars that SANDAG awarded to MBE/WBEs on over 1,500 transportation prime contracts and subcontracts executed in 2008, 2009, 2010, 2011, and 2012. BBC analyzed contracts that were USDOT-funded and contracts that were solely locally-funded.
- BBC examined whether there were any disparities between the utilization and availability of MBE/WBEs on transportation contracts that SANDAG awarded during the study period.
- BBC provided SANDAG with information from the availability analysis and other research that the agency might consider in setting its overall DBE goal, including the base figure and consideration of a "step-2" adjustment.
- BBC reviewed SANDAG's current contracting practices and Federal DBE Program measures and provided guidance related to refining existing practices and measures and implementing additional practices and measures.

Utilization and Disparity Analysis Results

In accordance with the Federal DBE Program, if SANDAG determines that it needs to continue the use of race- and gender-conscious measures on FTA-funded contracts, then it should evaluate which DBE groups are eligible to participate in those programs. If SANDAG determines that only certain DBE groups (e.g., groups classified as underutilized DBEs) are eligible, then it must submit a waiver request to FTA. Utilization and disparity analysis results for SANDAG transportation contracts—along with other pertinent information—might be relevant to the agency's determination of which DBE groups could be eligible for any race- or gender-conscious measures.

Utilization results. The study team measured MBE/WBE participation in terms of "utilization"—the percentage of prime contract and subcontract dollars that SANDAG awarded to MBE/WBEs during the study period. Figure ES-1 presents overall MBE/WBE utilization on transportation contracts that SANDAG awarded during the study period, including both prime contracts and subcontracts. The darker portion of the bar presents SANDAG's utilization of MBE/WBEs that were DBE-certified during the study period. Overall, MBE/WBEs received 17.6

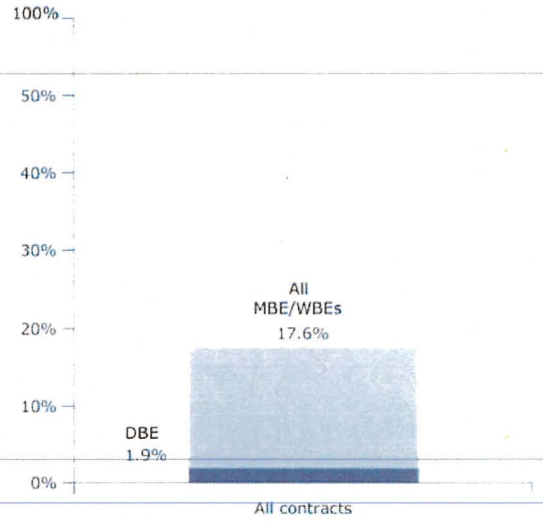
[3] For the purposes of the disparity study, the relevant geographic market area included San Diego County, Orange County, and Imperial County.

percent of SANDAG prime contract and subcontract dollars during the study period. MBE/WBEs that were DBE-certified received 1.9 percent of those dollars.

Figure ES-1.
Overall MBE/WBE utilization on SANDAG transit-related prime contracts and subcontracts

Note:
Includes FTA- and locally-funded SANDAG contracts.
Darker portion of bar presents certified DBE utilization.
The study team analyzed 1,545 SANDAG contracts.
For more detail and results by group, see Figure K-2 in Appendix K.

Source:
BBC Research & Consulting from SANDAG contracting data.



Disparity analysis results. Although information about MBE/WBE utilization is important to consider on its own, utilization is more informative when it is compared with the availability of MBE/WBEs for contracting work. As part of the disparity study, BBC compared the utilization of MBE/WBEs on SANDAG transit-related transportation prime contracts and subcontracts with the percentage of contract dollars that MBE/WBEs might be expected to receive based on their availability for that work. BBC expressed both utilization and availability as percentages of the total dollars that a particular group received for a particular set of contracts (e.g., 5% utilization compared with 4% availability). BBC then calculated a "disparity index" by dividing utilization by availability and multiplying by 100 (e.g., .05 divided by .04 equals 1.25, which multiplied by 100 equals a disparity index of 125). A disparity index of 100 indicates an exact match between utilization and availability for a particular group for a specific set of contracts (often referred to as "parity"). A disparity index of less than 100 may indicate a disparity between utilization and availability, and disparities of less than 80 are described in this report as "substantial."[4]

All transportation contracts. BBC assessed any disparities between MBE/WBE utilization and availability on all transit-related transportation prime contracts and subcontracts that SANDAG awarded during the study period. Figure ES-2 presents disparity indices for all MBE/WBE groups considered together and separately for each group. The line down the center of the graph shows a disparity index level of 100, which indicates parity between utilization and availability. A line is also drawn at an index level of 80, which indicates a substantial disparity.

[4] Some courts deem a disparity index below 80 as being "substantial" and have accepted it as evidence of adverse conditions for MBE/WBEs. For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng'g Contractors Ass'n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994). See Appendix B for additional discussion of those and other cases.

Figure ES-2. Disparity indices for SANDAG transit-related contracts

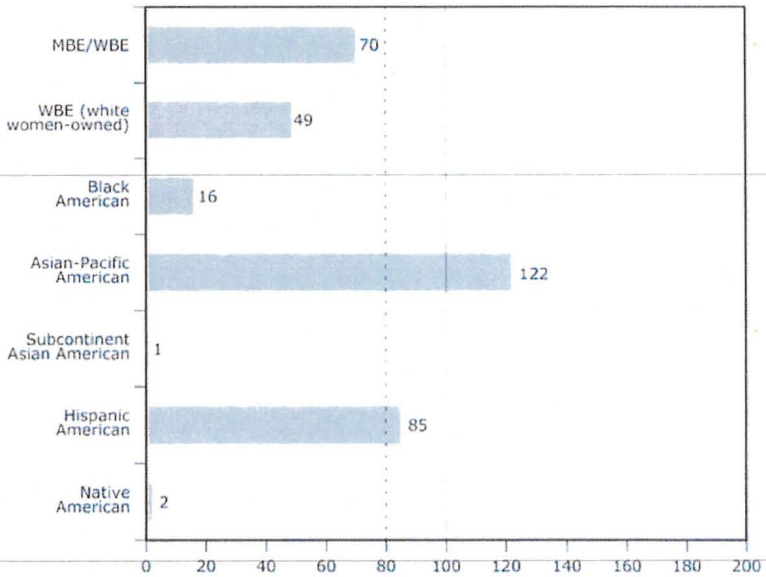
Note:

The study team analyzed 1,545 SANDAG contracts.

For more detail, see Figure K-2 in Appendix K.

Source:

BBC Research & Consulting availability and utilization analyses.



The disparity index of 70 for MBE/WBEs indicates that all MBE/WBEs considered together received approximately $0.70 for every dollar that they might be expected to receive based on their availability for the transit-related transportation prime contracts and subcontracts that SANDAG awarded during the study period. Note that DBE contract goals applied to many FTA-funded contracts during the study period, which may have affected the overall level of MBE/WBE utilization and the resulting disparity indices.

- Four MBE/WBE groups exhibited disparity indices substantially below parity—Black American-owned businesses (disparity index of 16), Subcontinent Asian American-owned businesses (disparity index of 1), Native American-owned businesses (disparity index of 2), and WBEs (disparity index of 49).
- Hispanic American-owned businesses (disparity index of 85) exhibited a disparity index below parity, and Asian-Pacific American-owned businesses (disparity index of 122) exhibited a disparity index that was above parity.

Contracts with and without DBE contract goals. Beginning July 1, 2011, SANDAG applied contract-specific DBE goals to many FTA-funded contracts. During the entire study period, SANDAG did not set MBE/WBE goals on locally-funded contracts. Comparing results between contracts with DBE contract goals (i.e., FTA-funded contracts awarded July 1, 2011 through December 31, 2012) and contracts without DBE contract goals is one way to assess the impact of DBE contract goals on the participation of MBE/WBEs in SANDAG transit-related transportation contracts. Figure ES-3 presents disparity analysis results separately for transit-related transportation contracts with and without DBE contract goals.

Figure ES-3. Disparity indices for SANDAG transit-related contracts with and without DBE contract goals

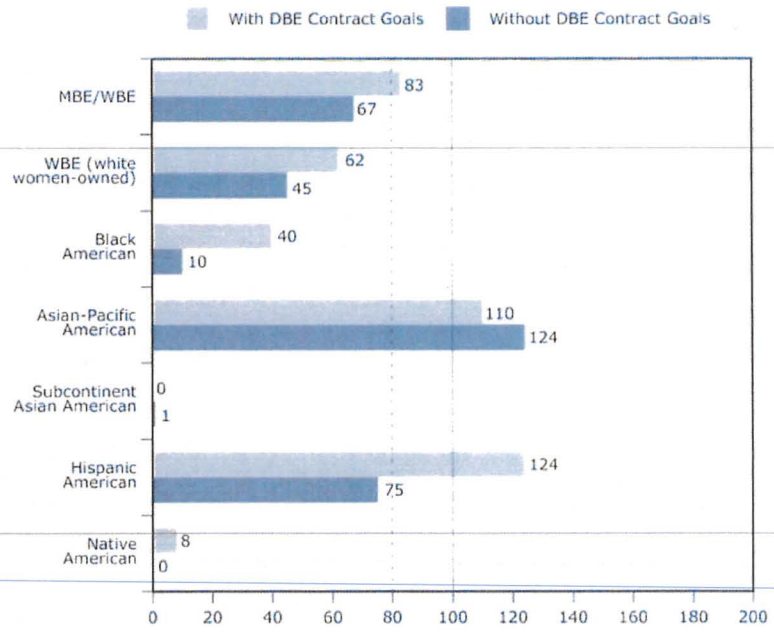
Note:

Number of prime contracts/subcontracts analyzed was 324 for contracts with DBE contract goals and 1,221 for contracts without DBE contract goals.

See Figures K-14 and K-15 for corresponding disparity results tables.

Source:

BBC Research & Consulting availability and utilization analyses.



Disparities were worse for MBE/WBEs overall and for several MBE/WBE groups on SANDAG transportation contracts without DBE contract goals compared to contracts with DBE contract goals. Key results include:

- MBE/WBEs overall showed disparities on contracts with DBE contract goals (disparity index of 83) and substantial disparities on contracts without DBE contract goals (disparity index of 67);
- Four MBE/WBE groups showed substantial disparities on both contracts with and without DBE contract goals: non-Hispanic white women-owned businesses (disparity indices of 62 and 45, respectively); Black American-owned businesses (disparity indices of 40 and 10, respectively); Subcontinent Asian American-owned businesses (disparity indices of 0 and 1, respectively); and Native American-owned businesses (disparity indices of 8 and 0, respectively);
- Hispanic American-owned businesses showed substantial disparities on contracts without DBE contract goals (disparity index of 75); and
- Asian-Pacific American-owned businesses did not show disparities on contracts with DBE contract goals (disparity index of 110) or on contracts without DBE contract goals (disparity index of 124).

Summary of disparity analysis results. In sum, disparity analysis results indicate that nearly all MBE/WBE groups exhibited substantial disparities either overall or on locally-funded contracts to which SANDAG did not apply DBE contract goals during the study period. The following groups exhibited substantial disparities on those contracts:

- Black American-owned businesses;
- Subcontinent Asian American-owned businesses;
- Hispanic American-owned businesses;
- Native American-owned businesses; and
- WBEs.

In contrast, Asian-Pacific American-owned businesses did not show substantial disparities overall or on contracts with or without DBE contract goals. An Asian-Pacific American-owned engineering firm that was DBE-certified during the study period, but is no longer certified or minority-owned, received 60 percent of the total dollars that went to Asian-Pacific American-owned businesses (approximately $26 million of $43 million).[5]

If SANDAG determines that the continued use of race- and gender-conscious program measures is appropriate, then it should consider the above information in determining which MBE/WBE groups are eligible for participation in such measures. As part of the disparity study, the study team also examined information concerning conditions in the local marketplace for MBE/WBEs. SANDAG should review the full disparity study report, as well as other information it may have, in determining whether it needs to use any race- or gender-conscious measures, and if so, in determining which racial/ethnic and gender groups should be considered eligible for those measures.

Overall DBE Goal

According to 49 CFR Part 26, an agency is required to develop and submit an overall annual goal for DBE participation. The goal must be based on demonstrable evidence of the availability of DBEs relative to the availability of all businesses to participate on the agency's USDOT-funded contracts. The agency must try to meet the goal each year using race- and gender-neutral program measures and, if necessary, race- and gender-conscious measures (or a combination of both).[6]

As specified in The Final Rule effective February 28, 2011, an agency is required to submit its overall DBE goal every three years.[7] However, the overall DBE goal is an *annual* goal in that an agency must monitor DBE participation in its USDOT-funded contracts every year. If DBE participation for a particular year is less than the overall DBE goal for that year, then the agency

[5] If this single Asian-Pacific American-owned engineering firm had the same status at the beginning of the study period that it had on the last day of the study period (i.e., majority-owned), Asian-Pacific American-owned businesses would have shown a substantial disparity (disparity index of 57).

[6] 49 CFR Sections 26.45, 26.51.

[7] http://www.gpo.gov/fdsys/pkg/FR-2011-01-28/html/2011-1531.htm.

must analyze the reasons for the difference and establish specific measures to address the difference and that enable the agency to meet the goal in the next year. SANDAG must prepare and submit an overall DBE goal that is supported by information about the steps that it used to develop the goal. SANDAG is required to next submit a goal for federal fiscal years (FFYs) 2016 through 2018.

Federal regulations require SANDAG to establish its overall DBE goal using a two-step process:

1. Determine a base figure; and
2. Consider a "step-2" adjustment.

Determine a base figure. Establishing a base figure is the first step in calculating an overall DBE goal for SANDAG's FTA-funded transportation contracts. BBC calculated the base figure by measuring the availability of "potential DBEs"—that is, MBE/WBEs that are DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26. BBC examined the availability of potential DBEs for FTA-funded contracts that SANDAG awarded during the study period. BBC's approach to calculating SANDAG's base figure is consistent with relevant court decisions, federal regulations, and USDOT guidance.

BBC's analysis indicates that the availability of potential DBEs for SANDAG's FTA-funded transportation contracts is 15.1 percent. SANDAG might consider 15.1 percent as the base figure for its overall DBE goal if it anticipates that the types, sizes, and locations of FTA-funded contracts that it will award in the future are similar to the FTA-funded contracts that the agency awarded during the study period.

Many agencies implementing the Federal DBE Program set an overall DBE goal based on *currently certified* DBEs. BBC also calculated a base figure using this approach. Currently certified DBEs might be expected to receive 5.4 percent of SANDAG's FTA-funded transportation prime contract and subcontract dollars based on their availability for that work.

Consider a "step-2" adjustment. The Federal DBE Program requires that an agency consider a step-2 adjustment to its base figure as part of determining its overall DBE goal. Factors that an agency should assess in determining whether to make a step-2 adjustment include:

- Current capacity of DBEs to perform agency work, as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.[8]

[8] 49 CFR Section 26.45.

Based on information from the disparity study, there are reasons why SANDAG might consider an upward adjustment to its base figure:

- SANDAG might adjust its base figure upward to account for barriers that minorities and women face in owning businesses in the local transportation contracting industry. Such an adjustment would correspond to a "determination of the level of DBE participation you would expect absent the effects of discrimination."[9]
- Evidence of barriers that affect minorities, women, and MBE/WBEs in obtaining financing, bonding, and insurance, and evidence that certain groups of MBE/WBEs are less successful than comparable non-Hispanic white male-owned businesses also supports an upward adjustment to SANDAG's base figure.

There are also reasons why SANDAG might consider a downward adjustment to its base figure:

- SANDAG must consider the volume of work DBEs have performed in recent years when determining whether to make a step-2 adjustment to its base figure. SANDAG utilization reports for FFYs 2010 through 2012 indicated median annual DBE participation of 5.1 percent for those years, which may be lower than its base figure. USDOT's "Tips for Goal-Setting" suggests that an agency can make a step-2 adjustment by averaging the base figure with past median DBE participation.
- BBC's analysis of DBE participation on SANDAG's FTA-funded transportation contracts also indicates DBE participation (2.0%) that is lower than the base figure.[10] If SANDAG were to adjust its base figure based on DBE participation information from the disparity study, it might consider taking the average of its base figure and the 2.0 percent DBE participation.

USDOT "Tips for Goal-Setting" states that an agency is not required to make a step-2 adjustment to its base figure as long as it can explain what factors it considered and can explain its decision in its Goal and Methodology document. Those factors are discussed in Chapter 9 of the SANDAG disparity study report.

Whether the DBE Goal Can Be Achieved through Neutral Means

The Federal DBE Program requires SANDAG to assess the percentage of its overall DBE goal that can be achieved through race- and gender-neutral measures, and if necessary, the percentage that can be achieved through race- and gender-conscious measures. USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures. USDOT suggests examining four general questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial/ethnic or gender groups?
2. What has been the agency's past experience in meeting its overall DBE goal?

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[9] 49 CFR Section 26.45 (b).

[10] See Chapter 6 for details about how BBC's analysis differs from SANDAG's Uniform Reports of DBE Awards/Commitments and Payments.

3. What has DBE participation been when the agency did not use race- or gender-conscious measures?
4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial/ethnic or gender groups? As discussed in detail in Chapter 4, BBC examined marketplace conditions in the San Diego area, including in the areas of:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding, and insurance; and
- Success of businesses.

There was quantitative evidence of disparities for MBE/WBEs overall, and for specific groups, in the above areas. Qualitative information also indicated evidence of discrimination affecting the local marketplace. However, some minority and female business owners that the study team interviewed as part of the disparity study did not think their businesses had been affected by any race- or gender-based discrimination.

2. What has been the agency's past experience in meeting its overall DBE goal? Figure ES-4 presents the participation of certified DBEs on SANDAG transportation contracts in recent years, as presented in SANDAG reports to USDOT. As shown in Figure ES-4, SANDAG has not met its DBE goal in recent years based on awards and commitments to DBE-certified businesses.

Figure ES-4.
SANDAG's reported past certified DBE participation on FTA-funded contracts, FFYs 2010 through 2012

FFY	DBE attainment	Annual DBE goal	Difference
2010	6.80 %	7.04 %	-0.24 %
2011	5.10	7.04	-1.94
2012	3.20	7.04	-1.64

Source:
SANDAG FTA DBE Goal Methodology FFY 2013-FFY 2015.

3. What has DBE participation been when the agency did not use race- or gender-conscious measures? SANDAG did not apply DBE contract goals or any other race- or gender-conscious measures to any locally-funded transportation contracts that the agency awarded during the study period. Overall, certified DBEs received 1.6 percent of the dollars associated with those contracts. SANDAG should consider that information when determining the percentage of its overall DBE goal that it can achieve through race- and gender-neutral measures.

4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year? When SANDAG is considering the extent to which it could meet its overall DBE goal through race- and gender-neutral measures, it will need to review race- and gender-neutral measures that are already in place as well as neutral measures that it has planned or that could be considered for future

implementation. The study team reviewed many of SANDAG's current and planned measures as well as those of other organizations in California (for details, see Chapter 10). The neutral measures that SANDAG currently has in place are extensive. SANDAG plans on continuing to use those measures in the future. There were several recommendations that business owners and managers made related to those measures as part of in-depth anecdotal interviews and public meetings (for details, see Appendix J).

Implementing the Federal DBE Program

Chapter 11 reviews USDOT requirements for SANDAG's implementation of the Federal DBE Program and identifies potential areas for further refinement. Three key potential areas of refinement are discussed below.

Encourage firms to become DBE-certified. Participation of certified DBEs would be higher if more MBE/WBEs that participate on, or are potentially available for, SANDAG prime contracts and subcontracts would become DBE certified. For example, only about one-quarter of the MBE/WBEs that the study team included in the availability database (25%) are certified as DBEs. Many businesses participating in in-depth interviews or public meetings commented on the DBE certification process. Although some business owners gave favorable comments about the certification process, several business owners were highly critical about the difficulties and time requirements associated with certification. SANDAG might consider more effectively communicating information about the Federal DBE Program to MBE/WBEs, particularly information about the benefits of DBE certification.

Account for potential DBE participation. MBE/WBEs that are not DBE-certified may be considered in the overall DBE goal but are not counted in the participation reports that are used to measure whether SANDAG has met its overall DBE goal.

USDOT permits agencies to explore whether one reason why they have not met their overall DBE goal is because they are not counting the participation of potential DBEs. USDOT might expect an agency to explore ways to further encourage potential DBEs to become DBE certified as one way of closing the gap between reported DBE participation and its overall DBE goal. In order to have the information to explore that possibility, SANDAG might consider:

- Developing a system to collect information on the race/ethnicity and gender of the owners of all businesses—not just certified DBEs—that participate in its contracts;
- Developing internal participation reports of MBE/WBEs (by race/ethnicity and gender) and of businesses that are currently or could potentially be DBE-certified for its contracts; and
- Continuing to track participation of certified DBEs on FTA-funded contracts, per USDOT reporting requirements.

Consider refinements to monitoring compliance with the current DBE contract goals program. Some individuals participating in in-depth interviews and public meetings suggested that agencies should explore ways of more effectively monitoring prime contractors' compliance with DBE contract goals to better achieve the objective of further developing MBE/WBEs. Many individuals indicated that there is widespread abuse of DBE contract goals and good faith efforts including false reporting of DBE participation, falsification of good faith

efforts, and the reduction or elimination of DBEs' work scopes (for details, see Appendix J). SANDAG might review such concerns further when evaluating ways to improve its current implementation of the Federal DBE Program, particularly if it determines that continuing the use of race- and gender-conscious measures is appropriate. The agency should also review legal issues, including state contracting laws and whether certain program options would meet USDOT regulations.

Next Steps

The disparity study represents an independent analysis of information related to SANDAG's implementation of the Federal DBE Program. SANDAG should review study results and other relevant information when making decisions concerning its implementation of the Federal DBE Program. In addition, USDOT periodically revises the Federal DBE Program and issues guidance concerning implementation of the program. Also, new court decisions often provide insights related to the proper implementation of the Federal DBE Program. SANDAG should closely follow such developments.

CITY OF SAN DIEGO

CITIZENS EQUAL OPPORTUNITY COMMISSION

BIDDING AND CONTRACTING SUBCOMMITTEE

MAYOR FAULCONER' S LETTER ATTACHMENT

Submitted to CEOC Commission for Consideration

Revised: 2.10.15

Issues List of bidding and contracting barriers for E/SLBE and large prime contractors who sub out work to E/SLBEs.

1. Overall Improvements for Bid and Negotiation, Contract Award and Contract Amendment
    a. Decrease timelines for all processes
    b. Communicate how the process works and when changes occur clearly and often with contracting community (construction contractors, consultants and supply vendors
2. Bidding & Negotiation Processes
    a. Provide Noticing to Bidders that uses best methods for clear & complete communications about:
        i. How to participate in bid?
        ii. What is being bid?
        iii. Which Department is conducting the bid?
        iv. What process is being used for the bid?
        v. What is the timeline and process for the bid?
        vi. What is the complete scope, budget, timeline for the project?
        vii. What is the criteria for selection?
    b. Decrease timeline to prepare, conduct and award bid. (Reduce gaps in services on existing contracts caused by slow bid prep)
    c. Increase the number of E/SLBE bidders by improving the communications about bids, decreasing the risks associated with bidding and contracting and streamlining the certification process.
    d. Require reasonable amounts of insurance and bonding relative to scope, scale and discipline for the project. Provide support for E/SLBEs to reduce this financial burden through innovative programs that other cities and agencies have implemented.
    e. Conduct fair negotiations by committing sufficient Staff time to work with selected bidder to negotiate contract terms with City' s contract, technical and legal teams
    f. Conduct fair bid processes that have:
        i. Clear selection criteria and scorecards that analytically identify the best quality and best price for the work when appropriate to discipline.
        ii. Provide sufficient notice and time to bidders to: prepare proposals and to prepare and present presentations once short-listed
    g. Provide timely responses to RFQ/P submittals and for final award

h. Conduct debriefs when requested by bidders to clearly identify why they weren' t short listed or selected and how they could improve to be selected for future bids.

3. Contract Management and Amendment Processes
   a. Decrease contract award and amendment process timelines – interdepartmental issues and other issues are creating extensive time periods in some cases to process contracts for award and amend contracts. According to City Staff it can vary from 60 to 400 days.
   b. E/SLBE contracted work should not be re-bid as work under a Prime E/SLBE as sub-consulting services to a Prime Consultant or Construction Contractor.
   c. Time periods for noticing and review between and by the City Employee' s Union and City to determine which work should be assigned to City staff instead of to SLBE consultants should be identified and managed so as not to unreasonably delay the development of bids. Only services required by policy to be reviewed by Union should be reviewed and multiple reviews not specified in policy should not be allowed.