

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION
TO FTA FOR FEDERAL FISCAL YEARS 2023 THROUGH 2025
Draft, February 2022**

Introduction

North County Transit District (NCTD) hereby submits its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2023 through 2025 to the Federal Transit Administration (FTA) pursuant to [49 CFR Part 26, section 26.45](#).

Based on the results of the 2022 Disparity Study by Keen Independent Research (Keen Independent), NCTD proposes a 11.33% DBE goal for FFYs 2023 through 2025 for FTA-funded contracts, 6.15 percentage points projected to be accomplished through race-neutral means (outreach, training and other neutral efforts) and the remaining 5.18 percentage points projected to be accomplished through race- and gender-conscious means (DBE contract goals).

Step 1. Determining a Base Figure — Pursuant to 49 CFR Section 26.45(c)

NCTD began the process of determining its overall DBE goal by establishing a base figure. Consistent with USDOT regulations and guidance, NCTD developed availability data as part of a disparity study for FTA-funded contracts conducted by Keen Independent as part of NCTD’s 2022 Disparity Study.

Projections of FTA-funded Contracts. NCTD compiled information about FTA-funded contracting opportunities anticipated for FFY2023 through FFY2025. Figure 1 shows the spending by NAICS code projected for these three federal fiscal years. Note that there are subcategories of work within a single NAICS code when necessary. (The subcategories are shown under “type of work.”)

The right-hand column of Figure 1 shows the percentage of FTA-funded contract dollars projected for each type of work. Most of the future FTA-funded spending is related to railroad and railway roadbed construction.

Figure 1. NCTD FTA-funded future contract opportunities, FFY2023–FFY2025

NAICS	NAICS description	Type of work	FTA-funded	
			Dollars (\$1,000s)	Percent
237990	Other heavy and civil engineering construction	Railroad and railway roadbed construction	\$ 8,304	59.65 %
236220	Commercial and institutional building construction	Public building construction	1,472	10.57
541330	Engineering services	Other engineering	1,325	9.52
238210	Electrical contractors and other wiring installation contractors	Railroad signaling work	1,200	8.62
541330	Engineering services	Railroad engineering	850	6.11
561730	Landscaping services	Landscaping services	330	2.37
541990	All other professional, scientific, and technical services (primary)	Other professional services	200	1.44
517312	Wireless telecommunications carriers (except satellite)	Other other services	156	1.12
335999	All other electrical equipment and component manufacturing	Other goods	85	0.61
Total			\$ 13,922	100.00 %

Source: NCTD future expenditures projections.

DBE availability. The 2022 Disparity Study provided data about availability of DBEs and total firms to perform the types of work in Figure 1. The following summarizes how this information was developed.

Based on analysis of FTA-funded contracts by Keen Independent from January 1, 2016, through December 30, 2020, Keen Independent determined that San Diego and Orange counties should be selected as the relevant geographic market area for the availability analysis.

- About 84% of NCTD FTA-funded contract dollars from 2016 through 2020 went to firms located in San Diego and Orange counties.
- Therefore, the availability analysis examined firms with locations in San Diego and Orange counties.

Keen Independent also examined the types of work involved in FTA-funded contracts from 2016 through 2020. There were 16 types of work that accounted for 85% of FTA-funded contract dollars. The availability analysis focuses on firms performing these 16 types of work.

Keen Independent developed a database of businesses available for NCTD work (DBEs and non-DBEs) by contacting thousands of firms with locations in San Diego and Orange counties to ask about their availability for specific types of NCTD contracts. The firms contacted for the database came from the following sources:

- Companies that had previously identified themselves to NCTD as interested in learning about future work; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related subindustries in San Diego and Orange counties (D&B’s Hoover’s business establishment database). D&B’s Hoover’s database is accepted as the most comprehensive and complete source of business listings in the nation.

Keen Independent successfully contacted 6,176 businesses in San Diego and Orange counties. After consolidating duplicate responses and removing companies that are no longer in business, not-for-profit organizations, unable to perform transportation-related work, not located in San Diego County or Orange County, or uninterested in discussing availability for NCTD work, the final database contained 416 businesses, of which 39 (about 9.4%) were DBEs, as shown in Figure 2. (Each firm in the final availability database expressed qualifications and interest in NCTD work.)

The 2022 Disparity Study report explains the survey methodology in detail.

Figure 2. Availability “head count” of businesses included in the 2022 Disparity Study

	Number of firms	Percent of firms
DBEs	39	9.4 %
Non-DBEs	377	90.6
Total	416	100.0 %

Source: Keen Independent Research 2022 Disparity Study.

Relative availability of DBEs. Keen Independent identified the number of DBEs and total firms available for each of the NAICS codes shown in Figure 1. (Firms could indicate qualifications for more than one type of work.) Figure 3 provides these results.

- The first column of data in Figure 3 presents the numbers of DBEs in the final availability survey database.
- After dividing the number of DBEs by total firms (column 2 of data), Figure 3 indicates the percentage of firms in each subindustry that are DBEs (column 3 of the data).

Figure 3. Number of DBEs and total businesses in the availability analysis, by NAICS

NAICS	NAICS description	DBE firms	Total firms	Percentage of firms that are DBEs
237990	Other heavy and civil engineering construction	7	34	20.59 %
236220	Commercial and institutional building construction	12	134	8.96
541330	Engineering services	16	149	10.74
238210	Electrical contractors and other wiring installation contractors	1	16	6.25
541330	Engineering services	6	30	20.00
561730	Landscaping services	1	28	3.57
541990	All other professional, scientific, and technical services (primary)	6	34	17.65
517312	Wireless telecommunications carriers (except satellite)	1	23	4.35
335999	All other electrical equipment and component manufacturing	4	22	18.18

Source: Keen Independent Research 2022 Disparity Study.

Dollar-Weighted Availability. To calculate a base figure for the overall DBE goal, Keen Independent dollar-weighted the availability results for each NAICS code shown in Figure 3. This approach is consistent with USDOT’s “Wherever possible, use weighting” instructions concerning Step 1 calculations in “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

Weights for each NAICS code reflect the percentage of total dollars of FTA-funded contracts in that NAICS code (from Figure 1).

- The first column of data in Figure 4 shows those weights.
- The second column of data in Figure 4 shows the share of total firms in each NAICS code that are DBEs.
- Multiplying these two numbers together produces the dollar-weighted values in the third column of data in Figure 4.

Base Figure. Keen Independent summed the weighted availability values for all NAICS codes studied (third column of data in Figure 4). This sum, 16.51%, is the base figure for NCTD’s DBE goal for FTA-funded contracts.

Dollar-weighted availability is more precise than a simple “head count” of businesses because it considers the specific type of work performed and the total dollars of spending for firms with those specializations.

Figure 4. Dollar weighted availability estimates for DBEs for NCTD FTA-funded contracts, FFY2023- FFY2025

NAICS	NAICS description	Percent of FTA-funded contract dollars	Percentage of firms that are DBEs	Weighted availability
237990	Other heavy and civil engineering construction	59.65 %	20.59 %	12.28 %
236220	Commercial and institutional building construction	10.57	8.96	0.95
541330	Engineering services	9.52	10.74	1.02
238210	Electrical contractors and other wiring installation contractors	8.62	6.25	0.54
541330	Engineering services	6.11	20.00	1.22
561730	Landscaping services	2.37	3.57	0.08
541990	All other professional, scientific, and technical services (primary)	1.44	17.65	0.25
517312	Wireless telecommunications carriers (except satellite)	1.12	4.35	0.05
335999	All other electrical equipment and component manufacturing	0.61	18.18	0.11
	Total	100.00 %		16.51 %

Source: NCTD future expenditure projections and results from Keen Independent Research 2022 Disparity Study.

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

Per the Federal DBE Program, NCTD considered potential step 2 adjustments to the base figure as part of determining its overall annual DBE goal for FTA-funded contracts. Federal regulations outline factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.¹

Taking into account relevant information from the 2022 Disparity Study, NCTD considered each of the factors listed above in determining whether or not to adjust the base figure.

¹ 49 CFR Section 26.45.

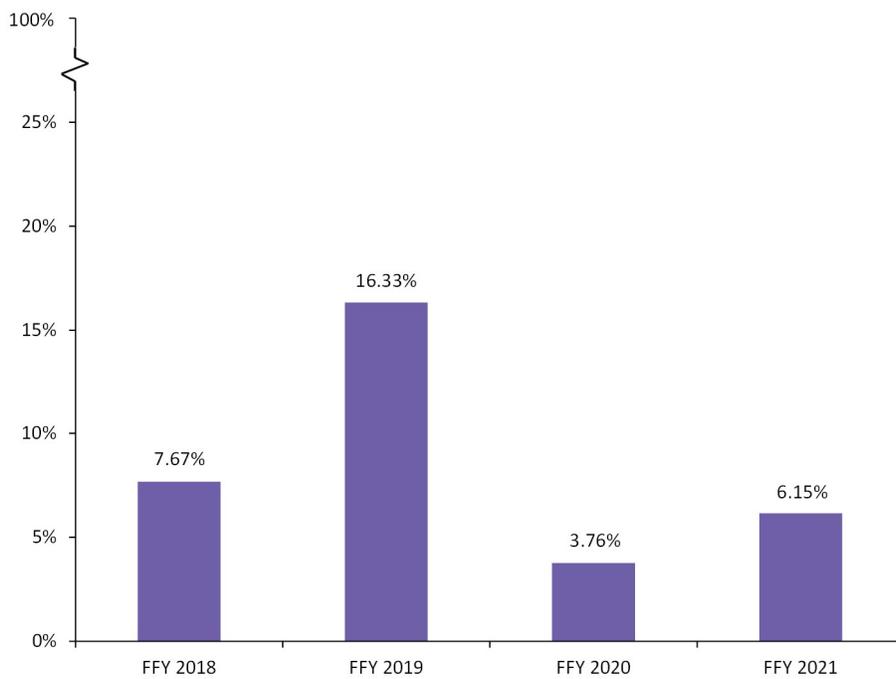
1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (the percentage of contract dollars going to DBEs).

Based on commitments/award data from NCTD Uniform Reports of DBE Awards or Commitments and Payments reported to FTA, the median DBE participation from FFY2019 through FFY2021 was 6.15%. This value suggests a possible downward step 2 adjustment based on this factor. These results are presented in Figure 5.

The study team also calculated median DBE participation based on payments data from NCTD Uniform Reports (median past DBE participation for FFY2019 through FFY2021 of 22.58%).

The potential step 2 adjustment is calculated based on commitments/award data as these results may be more indicative of actual DBE utilization for these contracts.

Figure 5. DBE participation on FTA-funded contracts based on NCTD Uniform Reports, FFY2018–FFY2021



Source: NCTD Uniform Reports of DBE Award or Commitments and Payments.

2. Information related to employment, self-employment, education, training and unions. The 2022 Disparity Study Summary Report discusses information about conditions in the Orange County and San Diego County transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in San Diego and Orange counties are presented in Appendices E through H. Keen Independent’s analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the San Diego and Orange counties area construction, professional services, goods and other services industries.

In the 2022 Disparity Study, the study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the San Diego and Orange counties area study industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the report provides detailed results of the business ownership regression analyses).²

- Those analyses revealed that African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans and white women working in the local construction industry were less likely than nonminorities and white men to own construction businesses, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.
- In addition, there were disparities in business ownership rates for Asian-Pacific Americans and Subcontinent Asian Americans working in the San Diego and Orange counties professional services industry.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if these groups owned businesses at the same rate as similarly situated nonminorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of DBEs *but for* the effects of race and gender discrimination.

As the explanation of these calculations is somewhat complex, NCTD provides Figure 6 on the next page to document how the upward adjustment was determined. A detailed explanation of each portion of the calculation follows the figure.

Figure 6 calculates the impact on overall DBE availability, resulting in a possible upward adjustment of the base figure to 21.65%. The analysis included the same NCTD future contract opportunities that the study team analyzed to determine the base figure. Calculations are explained on the following page.

²The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

Figure 6. Potential step 2 adjustment considering disparities in the rates of business ownership

Current DBEs	a. Weighted DBE Availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of overall DBE availability**
Construction					
African American	2.53 %	61	4.14 %	3.88 %	
Asian-Pacific American	4.75	81	5.86	5.49	
Hispanic American	7.86	66	11.91	11.15	
Native American	0.00	66	0.00	0.00	
Other minorities	2.33	n/a	2.33	2.18	
White women	0.00	45	0.00	0.00	
Minorities and women	17.46 %	n/a	24.24 %	22.70 %	17.90 %
All other businesses	82.54	n/a	82.54	77.30	
Total firms	100.00 %	n/a	106.78 %	100.00 %	
Professional services					
Asian-Pacific American	5.13 %	65	7.89 %	7.34 %	
Subcontinent Asian American	2.81	37	7.60	7.07	
Other minorities	5.32	n/a	5.32	4.95	
White women	1.37	n/a	1.37	1.27	
Minorities and women	14.63 %	n/a	22.18 %	20.63 %	3.52 %
All other businesses	85.37	n/a	85.37	79.37	
Total firms	100.00 %	n/a	107.55 %	100.00 %	
Goods					
Minorities	18.18 %	n/a	18.18 %	18.18 %	
White women	0.00	n/a	0.00	0.00	
Minorities and women	18.18 %	n/a	18.18 %	18.18 %	0.11 %
All other businesses	81.82	n/a	81.82	81.82	
Total firms	100.00 %	n/a	100.00 %	100.00 %	
Other services					
Hispanic American	2.43 %	124	1.96 %	1.96 %	
Other minorities	1.40	n/a	1.40	1.40	
White women	0.00	n/a	0.00	0.00	
Minorities and women	3.82 %	n/a	3.35 %	3.37 %	0.12 %
All other businesses	96.18	n/a	96.18	96.63	
Total firms	100.00 %	n/a	99.53 %	100.00 %	
Total for DBEs	16.51 %	n/a	n/a		21.65 %
Difference from base figure					5.14 %

Note: Numbers may not add to 100.00% due to rounding.
 * Initial adjustment is calculated as current availability divided by the disparity index for business ownership.
 ** Components of the goal 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 = 78.8%, professional services = 17.1%, goods = 0.6% and other services 3.5%).

Source: Keen Independent Research based on FTA-funded contracts for January 2016 through December 2020, and statistical analysis of U.S. Census Bureau American Community Survey data.

The study team completed these “but for” analyses for each industry and then weighted the results based on the proportion of projected FTA-funded contract dollars for FFY2023–FFY2025 (i.e., a 78.8% weight for construction, 17.1% weight for professional services, 0.6% for goods and 3.5% for other services). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses:

1. Current availability. Column (a) presents the current weighted availability of DBEs by group for construction, professional services, goods and other services. Each row presents the percentage availability by group. The current combined availability of DBEs for projected NCTD FTA-funded contracts for FFY2023 through FFY2025 is 16.51 percent, as shown in bottom row of column (a).
2. Disparity indices for business ownership. As presented in Appendix F, African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans and white women working in the construction industry were less likely to own construction firms than similarly situated nonminorities and white men. These differences were statistically significant for each of those groups.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as nonminorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), African Americans own construction businesses at 61 percent of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F explains how the study team calculated the disparity indices.

3. Availability after initial adjustment. Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team 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.
4. Availability after scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100 percent for each industry. The study team re-scaled 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 firms” in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for African Americans shown for construction was calculated in the following way: $(4.14\% \div 106.78\%) \times 100 = 3.88\%$.
5. Components of overall DBE goal with upward adjustment. Column (e) of Figure 6 shows the component of the total base figure attributed to the adjusted DBE availability for each industry. The study team calculated each component by taking the total availability estimate shown in column (d) for each industry and multiplying it by the proportion of projected FTA-funded contract dollars from FFY2023 through FFY2025 in each industry (i.e., 78.8% for construction, 17.1% for professional services, 0.6% for goods and 3.5% for other services).

For example, the study team used the 22.70 percent shown for DBE availability for construction firms in column (d) and multiplied it by 78.8 percent for a result of 17.90 percent. A similar weighting of DBE availability for professional services produced a value of 3.52 percent, 0.11 percent for goods and 0.12 percent for other services. The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 21.65 percent as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the “but for” DBE availability (21.65%) and the current availability (16.51%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 5.14 percentage points (21.65% - 16.51% = 5.14%).

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and professional services businesses in the San Diego and Orange counties area marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining NCTD construction and professional services contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Appendix J.

The information about financing, bonding and insurance supports an upward step 2 adjustment in NCTD’s overall annual goal for DBE participation in FTA-funded contracts.

4. Other factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.³

Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the San Diego and Orange counties area marketplace. There is quantitative and qualitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors.

There is no straightforward way to project the number of MBE/WBEs available for NCTD work but for the effects of these other factors.

Summary of approaches for making step 2 adjustments. Quantification of potential downward or upward step 2 adjustments is summarized below.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. Analysis of this factor might indicate a downward step 2 adjustment if NCTD

³ 49 CFR Section 26.45.

analyzed its estimates of past DBE participation for recent years (based on commitments/awards), the median DBE participation on FTA-funded contracts was 6.15 percent (from Figure 5).

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 16.51 percent base figure and 6.15 percent DBE participation is 10.36 percentage points (16.51% - 6.15% = 10.36%). One-half of this difference is a downward adjustment of 5.18 percentage points (10.36% ÷ 2 = 5.18%). The goal would then be calculated as follows: 16.51% - 5.18% = 11.33%. (These calculations are presented in Figure 7).

2. Information related to employment, self-employment, education, training, and unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 5.14 percentage points to reflect the “but for” analyses of business ownership rates. If NCTD made this adjustment, the overall DBE goal for FTA-funded contracts would be 21.65 percent (16.51% + 5.14% = 21.65%). Figure 7 summarizes these calculations.

Figure 7. Potential step 2 adjustments to overall DBE goal for FTA-funded contracts, FFY2023–FFY2025

Step 2 adjustment component	Value	Explanation
Lower adjustment of overall DBE goal for current capacity		
Base figure	16.51 %	From base figure analysis
Evidence of current capacity	<u>6.15</u>	Past DBE participation
Difference	10.36 %	
	÷ <u>2</u>	Reduce by one-half
Adjustment	5.18 %	Downward adjustment for current capacity
Base figure	16.51 %	From base figure analysis
Adjustment for current capacity	- <u>5.18</u>	Downward step 2 adjustment
Overall DBE goal	11.33 %	Lower range of DBE goal
Upward adjustment of overall DBE goal for business ownership		
Base figure	16.51 %	From base figure analysis
Adjustment for "but for" factors	+ <u>5.14</u>	"But for" step 2 adjustment for business ownership
Overall DBE goal	21.65 %	Upward adjustment of DBE goal for business ownership

Note: Numbers may not add to totals due to rounding.

Source: Keen Independent Research analysis.

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, the impact of these factors on availability could not be quantified in the 2022 Disparity Study.

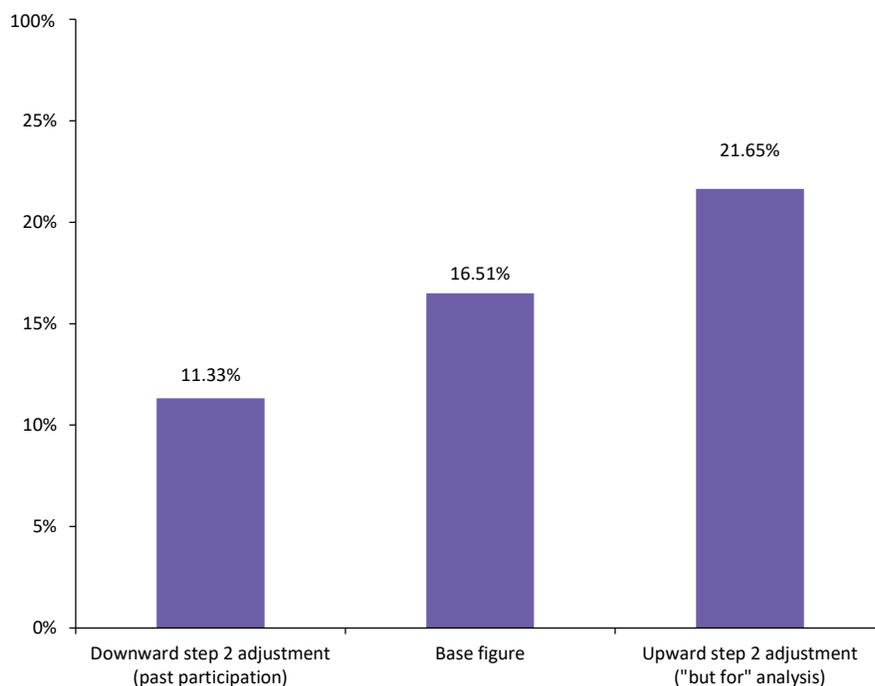
4. Other factors. Although the impact of the barriers to success of MBE/WBEs could not be specifically quantified in the 2022 Disparity Study, the evidence supports an upward adjustment.

Summary. NCTD considered whether or not to make a step 2 adjustment when determining its overall DBE goal.

- Adjustment for past DBE participation. If NCTD makes a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FTA-funded contracts would be 11.33%.
- Adjustment for disparity in business ownership. If NCTD instead makes an upward adjustment based on estimated MBE/WBE availability but for the effects of race- and gender-based discrimination, its DBE goal would be 21.65%.

Figure 8 presents a summary of potential step 2 adjustments which NCTD considered.

Figure 8. Summary of potential step 2 adjustments to NCTD overall DBE goal for FTA-funded contracts



Source: Keen Independent Research using 2020 Disparity Study results.

Adjustments Summary. For FTA-funded contracts from FFY2023 through FFY2025, NCTD proposes utilizing a downward step 2 adjustment, based on past DBE participation, that produces an overall DBE goal of 11.33%, which is considerable higher than its overall DBE goal of 4.20% for recent years.

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

To comply with the Federal DBE Program, NCTD must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.⁴ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. NCTD has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, NCTD has projected the portion of its overall DBE goals that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any). During the previous goal period NCTD operated an entirely race-neutral DBE program for its FTA-funded contracts.

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, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.⁵
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁶

Based on 49 CFR Part 26 and the resources above, NCTD considered the following 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?
3. What has DBE participation been when NCTD has not applied DBE contract goals?⁷
4. What is the extent and effectiveness of race- and gender-neutral measures that NCTD currently has in place and will put in place for the next fiscal year?

The balance of this section is organized around each of those general areas of questions.

⁴ 49 CFR Section 26.51.

⁵ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

⁶ 49 CFR Section 26.51.

⁷ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups? The 2022 Disparity Study provides conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

Marketplace conditions. As discussed in the 2022 Disparity Study, there was quantitative evidence of disparities in outcomes in Orange County and San Diego County marketplace for minority- and woman-owned firms in general and for certain MBE/WBE groups concerning the above issues.

Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes (see Qualitative Analysis section of the 2022 Disparity Study).

Results of the disparity analysis for FTA-funded contracts. The 2022 Disparity Study examines disparities in NCTD contracting. Utilization of certain MBE groups and minority-owned businesses in general on NCTD contracts was substantially below what might be expected from the availability analysis.

For the most recent two years studied (Jan. 2019 through Dec. 2020), there were also substantial disparities for Subcontinent Asian American- and white woman-owned firms in NCTD contracts (see 2022 Disparity Study).

Summary. NCTD reviewed the information about marketplace conditions and the disparity analyses for its contracts presented in the 2022 Disparity Study, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures. The combined information from the marketplace analyses and the disparity analyses for NCTD contracts indicates disparities in outcomes for African American-, Asian-Pacific American-, Hispanic American and Native American-owned firms. There is also some evidence of disparities for Subcontinent Asian American- and white woman-owned businesses.

2. What has been the agency’s past experience in meeting its overall DBE goal? Figure 9 shows results of NCTD’S reported DBE participation based on DBE commitments/awards on FTA-funded contracts.

As shown, NCTD fell short of its overall DBE goals in one of the four fiscal years when participation was measured based on commitments. DBE participation based on payments was higher than the goal for FFY2018 and FFY2021.

Figure 9. Overall DBE goal and reported DBE participation on FTA-funded contracts, FFY2018–FFY2021

Federal fiscal year	DBE goal	DBE commitments/awards	DBE payments	Difference from DBE goal	
				Awards	Payments
2018	4.59 %	7.67 %	19.38 %	3.08 %	14.79 %
2019	4.59	16.33	20.60	11.74	16.01
2020	4.20	3.76	43.82	-0.44	39.62
2021	4.20	6.15	22.58	1.95	18.38

Source: NCTD Uniform Reports of DBE Awards or Commitments and Payments.

3. What has been DBE participation as prime contractors? Keen Independent analyzed DBE participation based on NCTD’s FTA-funded prime contract dollars. From 2016 through 2020, DBEs received 12.6 percent of these prime contract dollars.

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 determining the extent to which it could meet its overall DBE goal through the use of neutral measures, NCTD reviewed the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent’s analysis of neutral remedies in the 2022 Disparity Study indicates that NCTD has already implemented an extensive set of neutral measures.

At this time, it is unclear whether any additional neutral measures would increase race-neutral participation of DBEs in NCTD’s FTA-funded contracts.

For the following reasons, NCTD proposes a race-neutral projection of 6.15 percentage points for its overall DBE goal for FFY2023 through FFY2025:

- The median DBE participation through race-neutral means was 6.15 percent based on NCTD’s reports for FFY2018 through FFY2021 (presented earlier in this appendix); and
- NCTD neutral initiatives are already considerable and will continue to expand.

The second column of numbers in Figure 10 provides projections using an overall DBE goal of 11.33 percent and a 6.15 percentage point race-neutral projection for FFY2023 through FFY2025. The race-conscious portion of the goal is 5.18 percentage points.

Figure 10. Race-neutral projections for FTA-funded contracts

Component of overall DBE goal	FFY 2020– FFY 2022	FFY 2023– FFY 2025
Overall goal	4.20 %	11.33 %
Neutral projection	- <u>4.20</u>	- <u>6.15</u>
Race-conscious projection	0.00 %	5.18 %

Source: Keen Independent Research 2020 Disparity Study.