

CHAPTER 5.

Marketplace Conditions

Federal courts have found that Congress “spent decades compiling evidence of race discrimination in government highway contracting, barriers to the formation of minority-owned construction businesses, and barriers to entry.”¹ Congress found that discrimination has impeded the formation and expansion of qualified minority- and women-owned businesses (MBE/WBEs).

As part of the Disparity Study, Keen Independent conducted quantitative and qualitative analyses of conditions in the Oregon marketplace to examine whether barriers that Congress found on a national level also appear in Oregon. The study team analyzed whether barriers exist in the Oregon construction and engineering industries for minorities, women, and MBE/WBEs, and whether such barriers might affect opportunities on ODOT and local agency transportation contracts.

Understanding current marketplace conditions is important as ODOT determines its overall goal for DBE participation in FHWA-funded contracts and projects the portion of its overall goal to be met through neutral means.

Keen Independent organized Chapter 5 to provide some of the historical context in which market conditions affecting minorities and women have evolved, as well as examine current conditions in the Oregon marketplace:

- A. Historical context in Oregon;
- B. Entry and advancement;
- C. Business ownership;
- D. Access to capital, bonding and insurance;
- E. Success of businesses; and
- F. Summary.

Chapter 5 also summarizes the analysis of input from about 400 individuals representing businesses, other government agencies, trade associations and other groups throughout the state.

- The Keen Independent study team conducted in-depth personal interviews and focus groups involving 80 businesses, trade organizations and local public agencies. The study team also conducted interviews and focus groups with ODOT staff. There were comments from 275 businesses through telephone and online availability surveys from May through October 2015.
- ODOT held public meetings in Bend, Roseburg, Salem and Portland in February 2015 and asked for written comments concerning the Disparity Study.

¹ *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d, 970 (8th Cir. 2003) (citing *Adarand Constructors, Inc.*, 228 F.3d at 1167–76); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 992 (9th Cir. 2005).

- The study team developed a website, an email address and dedicated telephone hotline for the study that asked any interested individuals to provide comments. Input received through these and other efforts is included as well.
- ODOT will hold five more public meetings and provide opportunities for comment on the draft 2016 Disparity Study report in April 2016. This additional information will be incorporated into the final report in late spring 2016.

Appendices E through H present detailed quantitative information concerning conditions in the Oregon marketplace. Appendix I discusses data sources.

Appendix J provides a summary of the qualitative information collected to date. Keen Independent will collect and analyze additional qualitative information through spring 2016 received through additional public meetings and a public comment period concerning the draft report.

A. Historical Context in Oregon

While discrimination has not been limited to Oregon, and is a part of a larger discussion of race, ethnicity and gender in this country, the following provides some historical context for more current information concerning any race or gender discrimination affecting the Oregon transportation contracting industry. It provides an overview and some examples of the events and policies that negatively affected minorities and women; however, it is not intended to provide a comprehensive historical narrative on all groups, or the subsequent efforts of the men and women of all backgrounds to right these wrongs.

Overview. Oregon has a very long history of government-sponsored and other discrimination against minorities and women, dating from the establishment of Oregon as a state in 1859. Some measures even involved forced labor on state roads: an 1862 poll tax required that all Chinese, African Americans and Hawaiians in Oregon pay an annual tax of two dollars; if they could not pay this tax, the penalty was to maintain state roads for 50 cents a day.²

Examples of historic discrimination against minority groups in Oregon. The following provides just a few examples for some of the racial and ethnic minority groups in Oregon.

- **African Americans.** Oregon was the only free state accepted in the Union with an exclusionary clause in the state constitution. Oregon's Bill of Rights prohibited African Americans to be in the state, own property and make contracts. The passage of the Fourteenth Amendment granted citizenship to African Americans; however, the exclusionary laws in Oregon remained intact and continued to deem it illegal for African Americans to live in Oregon.³

² Bancroft, H. (1888). *History of Oregon, Vol. II 1848-1888*. San Francisco, CA: The History Company, Publishers.

³ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

Although voters repealed these laws in 1926 and removed racist language in 2002 from the state's constitution, there is a long history of exclusionary practices aimed at African Americans in Oregon concerning employment, union membership, marriage, education, housing and many other aspects of daily life.^{4, 5, 6} For example, although unofficial, there were “Sundown Laws” in certain Oregon communities well into the 1970s that warned people of color to be out of town by sundown.⁷

- **Chinese Americans.** There was a large amount of Chinese immigration to Oregon in the decades after statehood. Oregon enacted anti-Chinese landholding, taxation and suffrage provisions in its constitution for fear of business competition.⁸ The increase in Chinese residents brought social tensions and violence, including massacres of Chinese people in Oregon.⁹ By the 1880s and for many years thereafter, the United States prohibited entry of Chinese immigrants to the country. Residential communities were segregated, children were banned from public schools and Chinese Americans faced many other forms of discrimination in Oregon well into the 1900s. Oregon's Cantonese Chinese population dropped from 10,390 in 1900 to 2,086 in 1940.¹⁰
- **Japanese Americans.** Recruitment of Japanese workers to Oregon largely began after prohibition of Chinese labor to the United States. Early Japanese American communities were highly segregated and, by U.S. law, Japanese immigrants could not marry citizens.¹¹ In 1923, the Oregon state legislature, which was dominated by members of the Ku Klux Klan at the time, passed multiple restrictive laws that targeted Japanese Americans among other groups.¹² For example, the Alien Land Law prevented first generation Japanese Americans from owning or leasing land and the Oregon Business Restriction Law permitted refusal of business licenses to first-generation Japanese Americans.¹³ Most Japanese living in Oregon at the outbreak

⁴ Nokes, G. (2015). *Black exclusion laws in Oregon*. Retrieved September 1, 2015, from http://oregonencyclopedia.org/articles/exclusion_laws/#.VeYdPPiVhBc

⁵ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

⁶ Shaw, P. (2012, November 28). *Why Aren't There More Black People in Oregon?* Retrieved September 11, 2015, from <http://www.portlandoccupier.org/2012/11/28/why-arent-there-more-black-people-in-oregon>

⁷ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

⁸ Chung, S. F. (2011). *In pursuit of gold: Chinese American miners and merchants in the American west*. Chicago, IL: University of Illinois Press; Grantham, A. (2015). *Expulsion of Chinese from Oregon City, 1886*. Retrieved September 8, 2015 from http://oregonencyclopedia.org/articles/expulsion_of_chinese_from_oregon_city_1886/#.Ve9nbfiVhBc

⁹ Lee, D. (2015). *Chinese Americans in Oregon*. Retrieved September 3, 2015, from http://oregonencyclopedia.org/articles/chinese_americans_in_oregon/#.Veh0CPIVhBd

¹⁰ *Ibid.*

¹¹ Katagiri, G. (2015). *Japanese Americans in Oregon*. Retrieved September 3, 2015, from http://oregonencyclopedia.org/articles/chinese_americans_in_oregon/#.Veh0CPIVhBd

¹² Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

¹³ *Ibid.*

of World War II were removed to internment camps and eventually relocated to other states. Although many in Oregon campaigned after the war to discourage their return, 70 percent of the 4,000 Japanese from Oregon did. Interned Japanese Americans returned to vandalized homes and boycotts of their businesses, or loss of their property altogether.^{14, 15}

- **People from India.** The Pacific Northwest, including Oregon, saw immigration from India in the 1890s and early 1900s. Men from India were attracted to jobs in the lumber and railroad industries. They also fled political conflict in British Colonial India, with immigrants to Oregon participating in the Indian independence movement. There was substantial violence against Indians by whites who believed they were unfairly competing for jobs. Beginning with riots in 1907 in Bellingham, Washington, there were waves of violence against East Indians that extended into Oregon, including a 1907 killing in Boring and attacks in 1910 against Indians in the St. Johns neighborhood of Portland. The United States' 1917 Immigration Act outlawed immigration from India along with many other Asian countries. The Oregon constitution also prohibited Indians from becoming citizens or voting.^{16, 17}
- **Mexican Americans.** Oregon's railroads and agricultural industry encouraged Mexican workers to fill jobs during World War I.¹⁸ However, U.S. policies changed in the 1930s and many Mexican nationals and Mexican American citizens were deported from the country. Because of "whites-only" employment policies and other discrimination, the only job open to many Latinos was hard labor in orchards and fields. There were many other forms of discrimination as well. For example, in 1935, Oregon law determined Mexican students who had observable Indian blood, based on skin color, were to be officially segregated in schools; this law provided that "White Mexicans" were exempt as they were the fair-skinned descendants of Spanish.¹⁹

¹⁴ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affection Oregon's past, present and future.* Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

¹⁵ Collisson, C. (2015). *Japanese American Wartime Incarceration in Oregon.* Retrieved September 8, 2015, from http://oregonencyclopedia.org/articles/japanese_internment/#.VeYxcPIVhBc

¹⁶ Koritala, S. *A historical perspective of Americans of Asian Indian origin 1790-1997.* Retrieved January 4, 2016, from http://www.infinityfoundation.com/mandala/h_es/h_es_korit_histical.htm

¹⁷ Ogden, J. (2016). *East Indians of Oregon and the Ghadar Party.* Retrieved January 4, 2016, from http://www.oregonencyclopedia.org/articles/east_indians_of_oregon_and_the_ghadar_party/#.VoqrQvZlIcs

¹⁸ García, J. (2015). *Latinos in Oregon.* Retrieved December 31, 2015, from http://oregonencyclopedia.org/articles/hispanics_in_oregon/#.VoW72vkrJpg

¹⁹ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affection Oregon's past, present and future.* Portland, OR: Oregon Center for Education Equality. Retrieved September 14, 2015, from <https://www.portlandoregon.gov/bps/article/412697>

- **Native Americans.** As with the nation as a whole, Oregon’s early history was marked by killing and dislocation of Native peoples throughout the state. Federal policy against tribal self-determination in the 1950s has had a particular impact on Oregon, with 62 tribes and bands “terminated” in the state, which is more than one-half of the total terminated tribes in the United States. Termination has had severe negative effects on Native peoples in Oregon.^{20, 21}

Examples of discrimination against women. There has also been a history of discrimination against women since Oregon’s founding. State laws and practices prohibiting women from owning property, voting and choosing certain professions were slowly removed over many decades. As recently as 1956, the Oregon Supreme Court upheld state law regulating the gender of people who could participate in certain occupations or events.²² Before federal legislation in the 1970s, it was common for women in Oregon to face discrimination from landlords and lenders.²³

Summary effects of historic discrimination in Oregon. Even though societal discrimination from decades past cannot form the legal basis for ODOT’s implementation of any race- and gender-conscious programs within the Federal DBE Program,²⁴ such discrimination has shaped the composition of the Oregon population, has had an inter-generational impact still evident today, and may currently limit opportunities for minorities and women to succeed in Oregon’s transportation contracting industry. Although it may have changed in form, instances of discrimination against people of color and women in Oregon continues today based on many accounts reviewed as part of this study. For example, a 2011 and a 2015 Fair Housing Council of Oregon audit found barriers in the housing market for black and Latino renters in Portland. Out of 50 tests, 64 percent of property owners discriminated against them.^{25, 26}

The broad assessment above provides context for Keen Independent’s analysis of entry into and business ownership within the construction and engineering industries, access to capital and success of businesses.

B. Entry and Advancement

Several studies throughout the United States have indicated that race and gender discrimination has affected the employment and advancement of certain groups in the construction and engineering industries. The study team therefore examined the representation of minorities and women among all workers in the Oregon construction and engineering industries and, in construction, the

²⁰ Quigley, K. *Introduction to Oregon’s Indian Tribes*. Retrieved January 2, 2016, from <http://bluebook.state.or.us/national/tribal/tribalintro.htm>

²¹ Fixico, D. (2016). *Termination and Restoration in Oregon*. Retrieved January 5, 2016, from http://oregonencyclopedia.org/articles/termination_and_restoration/#.VovhNPZljes

²² *State v. Hunter*, 208 Or. 282, 300 P.2d 455 (1956).

²³ Fair Housing Council of Oregon. *Sex Discrimination*. Retrieved December 31, 2015, from <http://www.fhco.org/discrimination-in-oregon/protected-classes/sex>

²⁴ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

²⁵ Hannah-Jones, N. (2011). Portland housing audit finds discrimination in 64 percent of tests; city has yet to act against landlords. *The Oregonian*.

²⁶ Schmidt, B. (2015). Portland housing audit shows blacks, Latinos face discriminatory barriers. *The Oregonian*.

advancement of minorities and women into supervisory and managerial roles. Appendix E presents detailed results.

As summarized below, quantitative analyses of the Oregon marketplace — based primarily on data from the 2000 U.S. Census and the 2008-2012 American Community Survey (ACS) — showed that, in general, certain minority groups and women appear to be underrepresented among all workers in the Oregon construction and engineering industries. In addition, minorities and women appeared to face barriers regarding advancement to supervisory or managerial positions.

Because individuals who form construction and engineering businesses tend to work in those industries before starting their own businesses, any barriers related to entry or advancement in the construction and engineering industries may prevent some minorities and women from starting businesses in those industries.

Quantitative information concerning entry into construction and engineering industries in Oregon. Keen Independent’s analyses suggest that certain minority groups and women are encountering barriers to entry in the construction and engineering industries in Oregon:

- Fewer African Americans worked in the Oregon construction industry than what might be expected based on representation in the overall workforce and analysis of educational requirements in the industry.
- Fewer Asian Americans worked in the Oregon engineering industry than what might be expected based on analyses of workers 25 and older with a four-year college degree.
- Women accounted for a very small portion of the Oregon construction and engineering workforce compared with other industries.

Quantitative information concerning advancement in the Oregon construction industry. Any barriers to advancement in the Oregon construction industry may also affect the number of business owners among those groups. When Keen Independent examined advancement in the Oregon construction industry, analyses suggest:

- Representation of minorities and women was much lower in certain construction trades (including first-line supervisors) compared with other trades.
- Compared to non-minorities working in the construction industry, Hispanic Americans were less likely to be managers.

Qualitative information about entry and advancement. Keen Independent collected qualitative information about entry and advancement in the Oregon construction and engineering industries through surveys, interviews and stakeholder comments as described at the beginning of Chapter 5.

Many business owners reported they worked in the construction or engineering industry before starting their businesses. Interviewees indicated that construction and engineering companies are typically started by individuals with connections to the construction or engineering industries. Therefore, construction and engineering business ownership rates in Oregon are likely affected by barriers that exist in the Oregon market to becoming employed in the construction or engineering industry.

Some minority, female and white male interviewees described workplace conditions that are unfavorable to women and minorities in the Oregon construction industry. One owner of a DBE-certified specialty construction firm commented that the chance of minority workers to be promoted on the job is “slim to none.” Several interviewees talked about sexual harassment on job sites.

Effects of entry and advancement on the Oregon transportation contracting industry. If there are barriers for minorities and women entering and advancing within the Oregon construction and engineering industries, there could be substantial effects on the number of minority- and women-owned construction and engineering-related businesses.

- Typically, employment and advancement are preconditions to business ownership in the construction and engineering industries. Because certain minority groups and women appear to be underrepresented in the Oregon construction and engineering industries — both in general and as supervisors and managers — it follows that such underrepresentation may reduce the number of minorities and women starting businesses, reducing overall MBE/WBE availability in the local transportation contracting industry.
- Underrepresentation of certain minority groups and women in the Oregon construction and engineering industries — particularly in supervisory and managerial roles — may perpetuate any beliefs or stereotypical attitudes that MBE/WBEs may not be as qualified as majority-owned businesses. Any such beliefs may also be making it more difficult for MBE/WBEs to win work in Oregon, including work with ODOT and local agencies.

C. Business Ownership

National research and studies in other states have found that race, ethnicity and gender also affect opportunities for business ownership, even after accounting for race- and gender-neutral factors. Figure 5-1 summarizes how courts have used information from such studies — particularly from regression analyses — when considering the validity of an agency’s implementation of the Federal DBE Program.

Quantitative information about business ownership. The study team used U.S. Bureau of the Census data from 2008-2012 to examine whether there are differences in business ownership rates between minorities and non-minorities and between women and men in the Oregon construction and engineering industries. In most cases, there were race and gender differences.

Keen Independent used regression analyses to examine whether those racial and gender differences in business ownership rates persisted after accounting for other personal characteristics. The regression models that the study team developed showed that Hispanic Americans, Native Americans and women working in the Oregon construction industry are less likely to own businesses than non-Hispanic whites and males, even after accounting for various personal characteristics including education, age and the ability to speak English.

African Americans, Native Americans and women working in the Oregon engineering industry are less likely to own businesses after accounting for certain personal characteristics.

Appendix F presents detailed results from the quantitative analyses of business ownership rates.

Qualitative information about business ownership.

Keen Independent collected qualitative information about business ownership in the Oregon construction and engineering industries through in-depth interviews, availability interviews, public hearings and other means.

Interviewees indicated that the Great Recession that began in 2007 made it extremely difficult for any owner of a construction or engineering firm to stay in business in Oregon, let alone start a new firm. Companies that were primarily working in the private sector had to quickly turn to compete for public sector work or go out of business. The result was extreme price pressure in the industry. Many companies did not survive, which created a ripple effect of unrecovered invoices for firms that remained. Larger and better-capitalized firms fared better during the downturn, according to interviewees.

Minority, women and white male owners of small businesses in the industry reported many of the same challenges. Many faced financial barriers at start-up and beyond. As examined later in Chapter 5 (and in Appendix H), relatively few minority- and women-owned firms in the Oregon marketplace are large. However, some interviews indicated that the Great Recession was even more difficult for minority- and women-owned firms.

Effects of disparities in business ownership rates for minorities and women on the transportation contracting industry. The disparities in business ownership rates for certain minority groups and women in the construction and engineering industries mean that there are fewer minority- and women-owned firms in the transportation contracting marketplace than there would be if there were a level playing field for minorities and women in the Oregon marketplace. Results suggest that the relative MBE/WBE availability for ODOT construction and engineering work may have been depressed. Compared with what they might be but for the effects of past discrimination, the availability benchmark for minority- and women-owned firms might be lower and the overall DBE goal might be lower when only considering current availability.

Figure 5-1.
Use of regression analyses of business ownership in defense of the Federal DBE Program

State and federal courts have considered differences in business ownership rates between minorities and women and non-Hispanic whites and males when reviewing the implementation of the Federal DBE Program. For example, disparity studies in California, Illinois and Minnesota used regression analyses to examine the impact of race, ethnicity and gender on business ownership in the construction and engineering industries. Results from those analyses helped determine whether differences in business ownership exist between minorities and women and non-Hispanic white males after statistically controlling for race- and gender-neutral characteristics. Those analyses, which were based on Census data, were included in materials submitted to the courts in subsequent litigation concerning the implementation of the Federal DBE Program.

D. Access to Capital, Bonding and Insurance

Access to capital represents one of the key factors that researchers have examined when studying business formation and success. Capital is required to start companies, so barriers accessing capital can affect the number of minorities and women who are able to start businesses. If race- or gender-based discrimination exists in capital markets, minorities and women may have difficulty acquiring the capital necessary to start or expand a business.

There is evidence that minorities and women face certain disadvantages in accessing the capital necessary to start, operate and expand businesses. In addition, minorities and women start business with less capital (based on national data). A number of studies have demonstrated that lower start-up capital adversely affects prospects for those businesses.

Keen Independent examined whether minority and female business owners (and potential business owners) have access to capital — both for their homes and for their businesses — that is comparable to that of non-minorities and men. In addition, the study team examined information about whether minority- and women-owned firms face any barriers in obtaining bonding and insurance.

Quantitative information about homeownership and mortgage lending. Wealth created through homeownership can be an important source of funds to start or expand a business. Barriers to homeownership or home equity can affect business opportunities by limiting the availability of funds for new or expanding businesses.

Keen Independent analyzed 2008-2012 American Community Survey (ACS) data to determine if there were any differences in homeownership in Oregon by racial and ethnic groups. The study team examined the potential impact of race and ethnicity on mortgage lending in Oregon based on Home Mortgage Disclosure Act (HMDA) data for 2007 and 2013. Results from examination of these two data sources were as follows.

- **Homeownership rates.** Relatively fewer African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans in Oregon own homes compared with non-Hispanic whites. These differences in homeownership rates were present prior to the Great Recession and persisted in 2008 through 2012.

Mortgage lending. In 2007, high-income African Americans, Hispanic Americans, Native Americans, and Native Hawaiian and other Pacific Islanders applying for home mortgages in Oregon were more likely than high-income non-Hispanic whites to have their applications denied. Disparities were also evident for Hispanic Americans and Native Americans in 2013.

Mortgage lending discrimination can also occur through higher fees and interest rates. Subprime lending is one example of such types of discrimination through fees associated with various loan types. Because of higher interest rates and additional costs, subprime loans affected homeowners' ability to grow home equity and increased their risks of foreclosure. There is national evidence that predatory lenders disproportionately targeted minorities with subprime loans, even when applicants could qualify for prime loans. Analysis of data for 2007 for Oregon indicates that a relatively high share of conventional home purchase loans and conventional home refinance loans were subprime for African Americans, Hispanic Americans,

Native Americans, and Native Hawaiians and other Pacific Islanders. Although the use of subprime loans dropped by 2013, a substantially greater percentage of conventional home purchase loans for Hispanic Americans were still subprime.

In conclusion, there is substantial quantitative evidence of disparities in homeownership and home mortgage lending for racial and ethnic minorities in Oregon. Any past discrimination against minorities that affected the ability to purchase and stay in homes could have long-term impacts on the home equity available to start and expand businesses, the ability of minority business owners to access business credit, and access to bonding for construction business owners.

Quantitative information about business credit. Business credit is also an important source of funds for small businesses. Any race- or gender-based barriers in the application or approval processes of business loans could affect the formation and success of MBE/WBEs.

To examine the role of race/ethnicity and gender in capital markets, the study team analyzed data from the Federal Reserve Board's Survey of Small Business Finances (SSBF) — the most comprehensive national source of credit characteristics of small businesses (those with fewer than 500 employees). The survey contains information on loan denial and interest rates as well as anecdotal information from businesses. The Pacific region is the level of geographic detail of SSBF data most specific to Oregon, and 2003 is the most recent information available from the SSBF. (More recent national data are consistent with 2003 SSBF results.)

Business loan approval rates. Keen Independent examined business loan approval rates in the Pacific region in 2003. Results include the following:

- Twice as many minority- and women-owned small businesses were denied loans than non-Hispanic male-owned small businesses.
- There are statistically significant disparities in loan approval rates for African American-owned small businesses compared with similarly-situated non-Hispanic white-owned firms.

Applying for loans. Fear of loan denial can be a barrier to business credit in the same way that actual loan denial presents a barrier. The SSBF includes a question that gauges whether a business owner did not apply for a loan due to fear of loan denial.

- Among small business owners who reported needing business loans, minority and female business owners in the Pacific region were substantially more likely than non-Hispanic white men to report that they did not apply due to fear of denial.
- Compared with similarly-situated non-minorities, the study team identified statistically significant disparities in the rate at which African Americans reported not applying for loans due to fear of denial.

Loan values and interest rates. Keen Independent also examined 2003 SSBF data on the average business loan values and interest rates paid by small businesses that received loans.

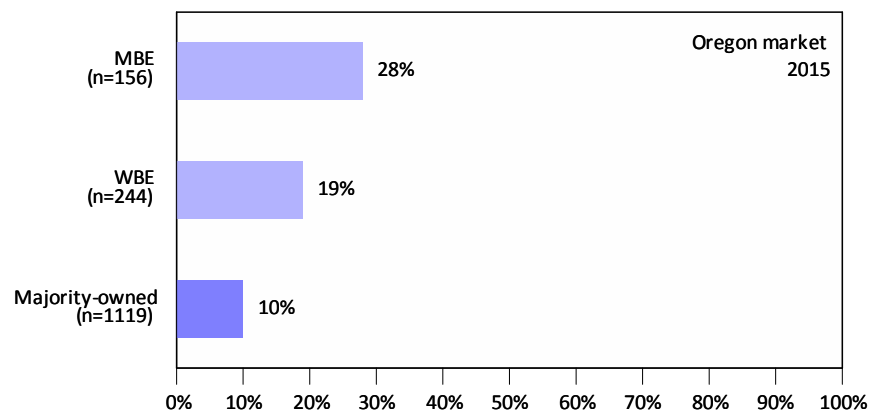
- The mean value of approved loans for minority- and female-owned businesses in the Pacific region was substantially lower than for non-Hispanic white male-owned firms.
- There is some evidence that minority- and women-owned small businesses in the Pacific region paid higher interest rates on their business loans than non-minority male-owned small businesses (however, the difference was not statistically significant). Such a disparity in interest rates is consistent with national data.

Experiences of MBEs, WBEs and majority-owned businesses in the Oregon transportation construction and engineering industries. As part of availability surveys the study team conducted in summer 2015, Keen Independent asked several questions related to potential barriers or difficulties in the local marketplace. The interviewer introduced these questions with the following: “Finally, we’re interested in whether your company has experienced barriers or difficulties associated with starting or expanding a business in your industry or with obtaining work. Think about your experiences within the past five years as you answer these questions.”

The first question was, “Has your company experienced any difficulties in obtaining lines of credit or loans?” Minority-owned firms were more than twice as likely as majority-owned firms to report that they had such difficulties. As shown in Figure 5-2, 28 percent of MBEs reported difficulties obtaining lines of credit or loans, compared with 10 percent for majority-owned firms. About 19 percent of WBEs reported that they had experienced difficulties obtaining lines of credit or loans.

These results appear to be consistent with the other data summarized in Chapter 5 concerning greater difficulties concerning access to financing for minority- and women-owned firms.

Figure 5-2. Percent responding “yes” to, “Has your company experienced any difficulties in obtaining lines of credit or loans?” for MBEs, WBEs and majority-owned firms in transportation contracting industry



Source:
2015 Availability
Interviews.

Quantitative information about bonding and insurance. Keen Independent also examined whether businesses face difficulties obtaining bonding and insurance as part of the availability interviews.

Bonding. Keen Independent asked firms completing availability interviews the following two questions:

- Has your company obtained or tried to obtain a bond for a project?
- [If so] Has your company had any difficulties obtaining bonds needed for a project?

Among the one-half of firms that had obtained or tried to obtain a bond for a project, 23 percent of MBEs and 20 percent of WBEs indicated difficulties obtaining bonds needed for a project compared with 9 percent of majority-owned firms.

Insurance requirements. The study team also asked, “Have any insurance requirements on projects presented a barrier to bidding?” Again, insurance requirements appear to present a barrier to relatively more minority- and women-owned firms than majority-owned firms. Approximately 25 percent of MBEs and 18 percent of WBEs interviewed reported such difficulties compared with 11 percent of majority-owned firms.

Qualitative information about access to capital, bonding and insurance. Keen Independent collected qualitative information about access to capital, bonding and insurance for businesses in the Oregon transportation contracting industry through in-depth interviews, availability interviews and public hearings and other means.

Business financing. Many firm owners reported that obtaining financing was important in establishing and growing their businesses (including financing for working capital and for equipment), and surviving poor market conditions.

- Small business owners indicated that access to financing was a barrier in general and more specifically when starting and first growing. Many used personal or family resources to finance their businesses.
- Many business owners reported that obtaining financing continues to be a barrier for their businesses today.
- Some interviewees, including MBEs, WBEs and majority-owned firms, reported that slow payment on contracts and subcontracts led to an increased need for business capital and financing.

Some interviewees reported that it was more difficult for women and minorities to obtain financing.

- The white female owner of a DBE-certified construction business recalled gender discrimination while trying to obtain a loan. A bank loan officer told her, “Send your husband in on Monday, and we’ll get this [loan] finalized.” (She changed banks because of this and eventually received a loan.)

- A public meeting participant said, “There’s no access to capital, period. It just isn’t there.”

Also, if business size and personal net worth are affected by race or gender discrimination, such discrimination could also impact the ability to obtain business financing. This can have a self-reinforcing effect, as many interviewees noted the importance of business capital and credit to pursue larger construction and engineering contracts.

Bonding. For ODOT and local agency construction contracts, surety bonds are typically required to bid on projects. Sometimes prime contractors require subcontractors on a project to have bonds.

In order to obtain a bond, businesses must provide company history and evidence of financial strength to a bonding company. The bonding company uses this information to determine whether to issue a bond of a particular size. Consequently, any reduced access to capital may negatively impact the ability to obtain a bond. Bonding companies also use different ratios to calculate bonding capacity and they charge different rates based on a number of factors, which can affect the cost-competitiveness of a firm’s bids.

According to business owners and other individuals interviewed:

- Many MBEs, WBEs and other small construction companies cannot obtain the necessary bonding to bid on ODOT and other public contracts or certain sizes of contracts. There is evidence that companies lose contracts or are unable to compete for them because of bonding requirements. Bonding requirements may force them to operate as subcontractors on public contracts where primes are willing to “carry” the subcontractors.
- Bonding is linked to company assets, and according to some interviewees, a personal guarantee can be required.
- Some interviewees reported different treatment of minority- and women-owned firms by bonding companies. For example, a representative of a business assistance organization stated that bonding agents set bond amounts based on their “feel,” and noted that this creates disparity. She said that if an agent doesn’t like your “look,” he will give you a different ratio when calculating your bonding capacity.
- Interviewees explained the link between business and personal finances and bonding. Several minority and female business owners discussed the barrier that being required to provide a personal guarantee has for small businesses.
- Some business owners said that obtaining bonding was even more difficult during the Great Recession.

Access to insurance. Construction and professional services firms bidding or proposing on ODOT and local government contracts must meet those agencies’ insurance requirements. Provisions often apply to subcontractors and subconsultants.

The study team asked business owners and managers whether insurance requirements and obtaining insurance presented barriers to doing business. In general, interviewees reported that obtaining insurance is relatively easy. The barrier presented by insurance requirements is due to the cost, especially at high dollar limits or certain types of insurance.

If a small business owner decides that the premiums for a certain level of insurance are cost-prohibitive, it may preclude the firm from bidding on certain contracts, especially public sector contracts. Some minority- and women-owned firms reported losing work because of unnecessary or onerous insurance requirements for those contracts. For example:

- A representative of an MBE-certified engineering consulting firm reported, "... they want you to buy this insurance which is not required for any of our work, but you can't sign the contract until you have it ... so we basically did not sign [a local agency] contract because of that."
- The owner of a DBE-certified engineering company said, "In 2010 ... we could not find an insurance carrier who would provide professional liability insurance to a firm of our [small] size" He said that they lost work because of this.

The cost of insurance is a barrier to public sector work for some small businesses according to businesses interviewed in the study. Some professional services firms say it is their second largest expense after salaries.

Effects of access to capital, bonding and insurance on the transportation contracting industry.

Potential barriers associated with access to capital, bonding and insurance may affect business outcomes for MBE/WBEs compared to majority-owned firms.

- Well-capitalized businesses are, in general, more successful than other businesses.
- For ODOT and other public sector construction contracts, bonding and insurance are required to bid as a prime contractor. Interviewees report that these requirements affect subcontractors as well. Insurance also affects engineering-related prime consultants and subconsultants.
- A company must also have considerable working capital to complete an ODOT contract or subcontract, especially if there are delays in payment on that contract (which some businesses experience).
- Compared with majority-owned firms, MBE/WBEs in the Oregon transportation contracting industry are disproportionately small. Obtaining business financing, bonding and insurance is more of a barrier to small businesses than large businesses. The effect of such barriers is to make it less likely that a small firm can expand or successfully pursue public sector work.

- To obtain bonding, a company must have financial strength. Any barriers to accessing capital can affect a company's ability to obtain a bond of a certain size. There is evidence that minority- and women-owned firms do not have the same access to capital as majority-owned firms.
- There is some quantitative evidence that minorities do not have the same personal access to capital as non-minorities, which affects personal financial resources. Personal net worth and financial history can affect access to business loans and bonding in Oregon.

E. Success of Businesses

Keen Independent completed quantitative and qualitative analyses that assessed whether the success of MBE/WBEs differs from that of majority-owned businesses in the Oregon transportation contracting industry. The study team examined business success in terms of participation in the public and private sector; relative bid capacity; business closure, expansion, and contraction; and business receipts and earnings. Appendix H provides details about these quantitative analyses of success of businesses. Keen Independent also collected and analyzed information from interviews with business owners and managers and others knowledgeable about the local contracting industry.

Quantitative analysis of participation in the public sector, contracting roles and bid capacity.

Keen Independent drew on information from availability interviews to examine any patterns of MBE/WBE and majority-owned business participation in the industry. Results suggest the following:

- Most firms in the transportation contracting industry pursue both public and private sector work depending on the type of work they do and market opportunities. This is true for MBEs and WBEs as well as majority-owned firms.
- About two-thirds of MBEs, WBEs and majority-owned firms bid or propose as prime contractors or prime consultants. Many firms also bid as subcontractors as well. Compared with majority-owned companies, relatively few MBEs or WBEs have been awarded contracts or subcontracts of \$1 million or more in size.
- Firms in different lines of work within the transportation industry tend to bid on different sizes of contracts (i.e., bridge contracts are larger than surveying contracts). However, after controlling for subindustry, there do not appear to be fewer MBEs bidding on large contracts compared with majority-owned firms. In other words, there is no indication that “bid capacity” is, on average, less for MBEs than majority-owned firms within the same construction or engineering subindustry. If anything, more MBEs bid on relatively large contracts than majority-owned firms in Oregon. (Results were less conclusive for WBEs.)

Appendix H describes these analyses.

Quantitative analysis of business closure, expansion and contraction. Based on U.S. Small Business Administration analyses for 2002 to 2006 for Oregon:

- African American-, Hispanic American- and women-owned firms were more likely than white- (or male-) owned businesses to close, but they were also less likely to shrink in size.
- Asian American-owned businesses were less likely to contract than white-owned businesses.

Quantitative analysis of business receipts and earnings. Keen Independent examined business earnings data for Oregon construction and engineering-related industries from the U.S. Census Bureau and the 2015 availability interviews with Oregon businesses. The data for annual revenue pertained to 1999, 2007 through 2012 and 2012 through 2014.

- With only a few exceptions, across time periods and data sources, minority- and women-owned firms had lower revenue than majority-owned firms.
- One of the data sets the study team examined included personal characteristics of the business owner. Regression analyses using these data indicated that female construction business owners had lower earnings than male owners, and Hispanic American engineering firm owners had lower earnings than non-minority owners after controlling for other factors.

Quantitative analysis of telephone survey results concerning potential barriers.

Keen Independent's availability interviews with Oregon businesses included questions about whether firms had experienced barriers or difficulties associated with starting or expanding a business. The availability interviews suggest that relatively more minority- and women-owned firms report difficulties across a broad set of aspects of operating a business within the Oregon transportation contracting industry.

- Relatively more MBEs and WBEs had difficulty learning about bid opportunities, including those at ODOT and local agencies and in the private sector. MBEs and WBEs were also more likely to indicate difficulty learning about subcontracting opportunities from prime contractors.
- MBEs and WBEs were substantially more likely to report difficulty networking with prime contractors or customers.
- Relatively more minority- and women-owned firms than majority-owned firms reported that size of projects was a barrier to bidding.
- Only a few firms said that they had difficulties obtaining final approval of work from inspectors or prime contractors, however, relatively more MBEs and WBEs reported this as a difficulty.

Qualitative information about success of businesses in the Oregon marketplace.

Keen Independent also collected qualitative information about success of businesses in the Oregon transportation contracting industry through in-depth personal interviews, availability surveys, public meetings and other avenues. Some of the comments, especially related to the Great Recession, were noted earlier in Chapter 5.

Fluid employment size and types of work. Interviewees explained that firms in the transportation contracting industry must continuously adapt their operations in response to market conditions. This flexibility includes the size of a company's permanent and temporary workforce, owned and leased equipment, the types of work they pursue and where they work within the state.

- Some firms indicated they have changed the types of work they perform depending on market opportunities. Many businesses reported bidding as both a prime and subcontractor, and pursuing both public and private sector work.
- A number of companies reported that their employment size expands and contracts depending on specific work opportunities, season or market conditions. As an extreme example, one owner of a specialty construction business reported that staff was reduced to one part-time employee during the Great Recession.
- Some firm owners reported flexibility in the locations and sizes of contracts that their firms perform. "\$5,000 to contracts in the millions" was a typical comment about the sizes of contracts and subcontracts firms perform. "No job is too small, neither too big for us" was stated by an owner of a DBE-certified professional services firm. This business owner, like many others, indicated that the firm could handle bigger contracts than those it had received.
- Interviewees reported that firms that typically bid on large contracts when the market is good will also bid on smaller contracts in lean times, increasing competition for those small projects.
- Some businesses reported that the profitability of a contract can be affected by where it is in the state, and that they won't always bid a contract in any location. Conversely, many firms reported that they frequently seek work throughout the state. Some Oregon businesses reported working in the Seattle area, which a few reported to currently be a stronger market than Oregon.
- Market conditions, backlog of work and whether they have the necessary skills in-house affect prime contractors' decisions to subcontract work out. Some prime contractors reported that they typically subcontract specialty work.
- Some interviewees reported that small businesses may be at a disadvantage because the acquisition of equipment and supplies is affected by the financial health of the company and its ability to obtain financing.

Importance of business relationships. Existing relationships are an important factor in finding opportunities to bid on work according to many prime and subcontractors. Interviewees frequently reported the following:

- Prime contractors take price into consideration when selecting a subcontractor, but the previous relationships they have also play a large role in the selection process. Trust that a subcontractor will get the job done is important to a prime contractor. “It’s relationship-based” was a typical response to how prime contractors choose subcontractors.
- Business owners reported that it is difficult to cultivate new relationships with prime contractors. “Primes want to work with subs they know” was a typical comment. One owner of a DBE-certified business said the primes often give the work to “friends.” She said she only got opportunities as a subcontractor when there were DBE contract goals.
- Some interviewees reported that prime contractors sometimes “shop” a subcontractor’s bid, so even priced-based selection of subcontractors is not always fair.
- Opportunities for a prime contractor or consultant to win work with a customer may also be based on prior relationships. One DBE business owner reported that it can be very difficult to establish a client base as a prime contractor.

Many minority, female and white male interviewees reported the presence of a “good ol’ boy” network in Oregon that affects the construction and engineering industries. Some reported that the “good ol’ boy” network added barriers for women- and minority-owned firms in the transportation contracting industry. For example:

- One interviewee described it as “a system that continually feeds itself,” and commented that ODOT was a part of it.
- An owner of a DBE-certified firm said that it can be difficult for minority-owned firms to break into the industry, adding, “Most of the game is like an ‘old boy’s club,’ so it’s really hard to get into position.”
- There were also interviewees across groups who did not have any negative experience with closed networks or thought the “good ol’ boy” network was a thing of the past.

Disadvantages for small businesses. Many interviewees indicated that small businesses are at a disadvantage when competing in the transportation contracting industry.

- For many of the reasons discussed above, small businesses including MBE/WBEs said that it was difficult to establish relationships with prime contractors and customers.
- Access to financing can be affected by business size.

In addition, owners and managers of small businesses reported that public agency contracting processes and requirements often put small businesses at a disadvantage when competing for public sector work. There was qualitative evidence that:

- It is more difficult for smaller firms to market and identify contract opportunities.
- Small construction businesses seeking prime contracting and subcontracting work face barriers due to public sector bonding requirements.
- Excessive paperwork that often comes with public sector work is an extra burden to small businesses.
- Large size and scope of public sector contracts and subcontracts present a barrier to bidding.
- Public sector insurance requirements are a barrier to construction and engineering-related businesses seeking public sector prime contracts and subcontracts.
- Interviewees indicated that public agencies favor bidders and proposers they already know, limiting opportunities for other businesses.
- Public agency screening of potential contractors and engineering firms through prequalification can be a barrier to bidding based on the interviews. It appeared to one interviewee to be a “catch-22” where the firm has to already have specific experience to win work that would provide that experience. This interviewee went on to explain that many agencies only consider the “firm’s” experience and not that of its employees, which works against newer and smaller companies. One representative of a minority-owned engineering company said that ODOT’s prequalification requirements are a challenge to meet, and that they tend to write contracts “with larger businesses in mind.”
- Slow payment or non-payment by owners or by prime contractors can be especially damaging to small businesses and represent a barrier to performing that work. (Some interviewees reported that they do not have sufficient capital to wait to be paid when working on large contracts.) One interviewee said that slow payment is “not something a small firm can bear.” Some interviewees said that slow payment of subcontractors is sometimes due to onerous retainage policies of public sector agencies. However, other interviewees said that primes sometimes do not quickly pay subcontractors even after getting paid on time by the public agency.

Data show that MBE and WBE construction and engineering firms in Oregon are somewhat more likely than majority-owned businesses to be small businesses. Therefore, any barriers for small businesses may have a disproportionate effect on MBEs and WBEs.

Evidence of stereotyping and other race and gender discrimination. In the in-depth interviews, availability surveys and other information the study team analyzed as part of the study, some interviewees indicated difficulties for minorities and women other than those associated with being a small business.

There was some evidence that some prime contractors or customers held negative stereotypes concerning minority- and women-owned firms.

- One DBE firm owner said that white firms in his industry “go in [to a job and are] considered competent until proven incompetent.” He added, “[DBEs and MBEs] go in competent and are considered incompetent [by default].”
- When asked about any stereotypical attitudes, the owner of a DBE-certified specialty contracting firm reported, “I see that a lot ... yeah ... I feel [that] the stigma of being a MBE or DBE contractor is [that] if you have this certification, all of a sudden you’re in this bucket of contractors that can’t do this job or can’t do that job ... you can only do these small little jobs We can compete with everyone else.”
- Several minority and female business owners described being treated differently on projects than similar majority-owned firms. When asked about double standards, a president of a DBE-certified construction business said there was much higher performance pressure on minority contractors than on their majority-owned counterparts, including on ODOT contracts.
- One female specialty construction business owner related that she prefers to not tell people she is the owner. She went on to say that there is still a perception that women are unable to perform equally as well as men. One female interviewee reported, “When you are one of a few women in the room [with a lot of engineers], people sometimes think you are going to take notes.” Another female president of a DBE-certified specialty contract firm said, “They just don’t have respect for you.” One female interviewee described the construction industry as a “man’s industry.”
- Some interviewees indicated that conditions for minority and female business owners have improved over time. One minority construction business owner indicated that unfair treatment based on race, ethnicity and gender has been experienced by nearly everybody in the construction industry. When asked if it is an ongoing problem, he stated, “... it’s gotten a lot better.” And, some minorities and women indicated that their businesses were not affected by any race or gender discrimination.

Appendix J provides views from business owners and managers, trade association representatives and others who are knowledgeable about the Oregon transportation contracting industry.

Summary concerning success of businesses on the transportation contracting industry.

Minority- and women-owned construction and engineering businesses in Oregon are somewhat more likely to be small businesses than majority-owned businesses. Therefore, any disadvantages for small businesses disproportionately affect MBEs and WBEs.

Success in the transportation contracting industry depends on relationships with prime contractors and customers. Some of the minority and female interviewees reported unequal treatment, negative stereotypes and other forms of discrimination in Oregon.

F. Summary

As discussed in this Chapter and supporting appendices, there is quantitative and qualitative information suggesting that there is not a level playing field for minority- and women-owned businesses in the Oregon transportation contracting industry.

Such information is important when ODOT examines its future overall goal for DBE participation (Chapter 9) and its future operation of the Federal DBE Program for FHWA-funded contracts (Chapters 10 and 11).

In April 2016, ODOT will hold additional public meetings and solicit comments concerning the results contained in the draft 2016 Disparity Study. The Final Report will incorporate analysis of this additional input.