

## CHAPTER 6.

### Availability Analysis

Keen Independent analyzed the availability of minority- and women-owned business enterprises (MBE/WBEs) that are ready, willing and able to perform ODOT and local agency prime contracts and subcontracts. ODOT can use availability results and other information from the study as it sets its overall DBE goal.

Chapter 6 describes the study team’s availability analysis in seven parts:

- A. Purpose of the availability analysis;
- B. Definitions of MBEs, WBEs, certified DBEs, potential DBEs and majority-owned businesses;
- C. Information collected about potentially available businesses;
- D. Businesses included in the availability database;
- E. MBE/WBE availability calculations on a contract-by-contract basis;
- F. Availability results; and
- G. Base figure for ODOT’s overall DBE goal for FHWA-funded contracts.

Appendix D provides supporting information.

#### **A. Purpose of the Availability Analysis**

Keen Independent examined the availability of MBE/WBEs for transportation contracts to develop:

1. A benchmark used in the disparity analysis; and
2. The base figure for ODOT’s overall DBE goals for FHWA-funded contracts

**1. Benchmark in the disparity analysis.** Chapter 7 of this Disparity Study compares ODOT’s utilization of MBE/WBEs against availability benchmarks.

- The disparity analysis compares the percentage of ODOT contract dollars that went to minority- and women-owned firms (MBE/WBE “utilization”) to the percentage of dollars that might be expected to go to those businesses based on their availability for specific types, sizes and locations of ODOT contracts (MBE/WBE “availability”).
- The comparisons in Chapter 7 determine whether there are any disparities between the utilization and availability of MBE/WBEs (by group) in ODOT work.

**2. Base figure for ODOT’s overall DBE goal.** As part of its operation of the Federal DBE Program, ODOT must establish an overall goal for DBE participation in its FHWA-funded contracts. The 2016 Disparity Study examines information for the three-year goal for FHWA-funded contracts beginning October 1, 2016. ODOT must follow regulations in 49 CFR Section 26.45 (c). It must start by calculating a “base figure” for its overall DBE goal, as explained in detail in Part G of this chapter.

- Keen Independent’s process for calculating the base figure for an overall DBE goal is the same as for determining MBE/WBE availability in a disparity analysis.
- However, the base figure calculation only includes current DBEs and those MBE/WBEs that appear to be eligible for DBE certification (“potential DBEs”). Therefore, businesses that have been denied certification, have been decertified, have graduated from the DBE Program or otherwise indicated that they would not qualify for certification should not be counted in the base figure.

This process follows guidance in the Final Rule effective November 3, 2014 and the United States Department of Transportation’s (USDOT’s) “Tips for Goal-Setting” that explains that minority- and women-owned firms that are not currently certified as DBEs but could be DBE-certified should be counted as DBEs in the base figure calculation.

The balance of Chapter 6 explains each step in determining the availability benchmarks and the base figure for ODOT’s overall DBE goal, beginning with definitions of terms.

## **B. Definitions of MBEs, WBEs, Certified DBEs, Potential DBEs and Majority-owned Businesses**

The following definitions of terms based on ownership and certification status are useful background to the availability analysis.

**MBE/WBEs.** The availability benchmark and the base figure analyses use the same definitions of minority- and women-owned firms (MBE/WBEs) as do other components of the 2016 Disparity Study.

**Race, ethnic and gender groups.** As specified in 49 Code of Federal Regulations (CFR) Part 26, the study team separately examined utilization, availability and disparity results for businesses owned by:

- African Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans;
- Hispanic Americans;
- Native Americans; and
- Non-Hispanic white women.

Note that “majority-owned businesses” refer to businesses that are not minority- or women-owned.

**Firms owned by minority women.** Businesses owned by minority women are included with the results for each minority group. “WBEs” in this report refers to non-Hispanic white women-owned businesses. This definition of WBEs gives ODOT information to answer questions that may arise pertaining to the utilization of non-Hispanic white women-owned businesses, such as whether the work that goes to MBE/WBEs disproportionately goes to businesses owned by non-Hispanic white women. Keen Independent’s approach is consistent with court decisions that have considered this issue.

**All MBE/WBEs, not only certified DBEs.** When availability results are used as a benchmark in the disparity analysis, all minority- and women-owned firms are counted as such whether or not they are certified as DBEs or as MBEs or WBEs. For the following reasons, researching whether race- or gender-based discrimination has affected the participation of MBE/WBEs in contracting is properly analyzed based on the race, ethnicity and gender of business ownership and not on DBE certification status.

- Analyzing the availability and utilization of minority- and women-owned firms regardless of DBE/MBE/WBE certification status allows one to assess whether there are disparities affecting *all* MBE/WBEs and not just certified DBEs. Businesses may be discriminated against because of the race or gender of their owners regardless of whether they have successfully applied for DBE certification.
- Moreover, the study team’s analyses of whether MBE/WBEs face disadvantages include the most successful, highest-revenue MBE/WBEs. A disparity study that focuses only on MBE/WBEs that are, or could be, DBE-certified would improperly compare outcomes for “economically disadvantaged” businesses with all other businesses, including both non-Hispanic white male-owned businesses and relatively successful MBE/WBEs.<sup>1</sup> Limiting the analyses to a group of businesses that only includes low-revenue companies would have inappropriately made it more likely for the study team to observe disparities for MBE/WBE groups.<sup>2</sup>

The courts that have reviewed disparity studies have accepted analyses based on the race, ethnicity and gender of business ownership rather than on DBE certification status.

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<sup>1</sup> In addition, 49 CFR Part 26 allows certification of white male-owned businesses as DBEs. Thus, disparity analyses based on certified DBEs might not purely be an analysis of disparities based on race/ethnicity and gender.

<sup>2</sup> An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the analyses, any comparison of wages between minorities and non-minorities would more likely show disparities in wage levels.

**Certified DBEs.** Certified DBEs are businesses that are certified as such through Oregon’s Certification Office of Minority, Women and Emerging Small Business (OMWESB), which means that they are businesses that:

- Are owned and controlled by one or more individuals who are presumed to be both socially and economically disadvantaged according to 49 CFR Part 26;<sup>3</sup> and
- Have met the gross revenue and personal net worth requirements described in 49 CFR Part 26.

**Potential DBEs.** Potential DBEs are MBE/WBEs that appear that they could be DBE-certified based on revenue requirements described in 49 CFR Section 26.65. Potential DBEs do not include businesses that have been decertified or have graduated from the DBE Program. The study team examined the availability of potential DBEs as part of helping ODOT calculate the base figure of its overall DBE goal for FHWA-funded contracts. Figure 6-1 further explains Keen Independent’s definition of potential DBEs.

Keen Independent obtained information from ODOT’s Office of Civil Rights to identify firms that, in recent years, had graduated from the DBE Program or had been denied DBE certification (and had not been recertified).

**Majority-owned businesses.** Majority-owned businesses are businesses that are not owned by minorities or women (i.e., businesses owned by non-Hispanic white males).

- In the utilization and availability analyses, the study team coded each business as minority-, women-, or majority-owned.
- Majority-owned businesses included any non-Hispanic white male-owned businesses that were certified as DBEs.

**Figure 6-1.**  
**Definition of potential DBEs**

Keen Independent did not include the following types of MBE/WBEs in its definition of potential DBEs:

- MBE/WBEs that had graduated from the DBE Program and not been recertified, or were de-certified;
- MBE/WBEs that are not currently DBE-certified that had applied for certification and had been denied; and
- MBE/WBEs not currently DBE-certified that appear to have exceeded the three-year average annual revenue limits for DBE certification.

At the time of this study, the overall revenue limit for DBE certification was \$23,980,000 (three-year average of annual gross receipts). Lower revenue limits applied for subindustries according to the U.S. Small Business Administration small business standards. Some MBE/WBEs exceeded either the \$23,980,000 or the subindustry revenue limits based on information that they provided in the availability surveys.

Business owners must also meet USDOT personal net worth limits for their businesses to qualify for DBE certification. Personal net worth was only a factor in the base figure calculations when a firm had graduated or been denied certification based on personal net worth that exceeded certification limits.

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<sup>3</sup> The Federal DBE Program specifies that African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women of any race or ethnicity, and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration are presumed to be disadvantaged.

### C. Information Collected about Potentially Available Businesses

Keen Independent’s availability analysis focused on firms with locations in Oregon and two counties in Washington State (Clark and Skamania County) that work in subindustries related to ODOT transportation-related construction and engineering contracts.

Based on review of ODOT prime contracts and subcontracts during the study period, the study team identified specific subindustries for inclusion in the availability analysis. Keen Independent contacted businesses within those subindustries by telephone to collect information about their availability for specific types, sizes and locations of ODOT and local agency prime contracts and subcontracts.

Keen Independent’s method of examining availability is sometimes referred to as a “custom census” and has been accepted in federal court. Figure 6-2 summarizes characteristics of Keen Independent’s approach to examining availability.

**Overview of availability surveys.** The study team conducted telephone surveys with business owners and managers to identify businesses that are potentially available for ODOT and local agency transportation prime contracts and subcontracts.<sup>4</sup> Figure 6-3 summarizes the process for identifying businesses, contacting them and completing the surveys.

Keen Independent began by compiling lists of business establishments that: (a) previously identified themselves to ODOT as interested in learning about future work (such as by listing themselves on ORPIN or eBIDs, previously submitting prime or sub bids or proposals, becoming planholders or requesting information updates from ODOT’s Office of Civil Rights); or (b) Dun & Bradstreet/Hoovers identified in certain transportation contracting-related subindustries in Oregon or Southwest Washington.<sup>5</sup>

Figure 6-2.  
Summary of the strengths of Keen Independent’s “custom census” approach

Federal courts have reviewed and upheld “custom census” approaches to examining availability. Compared with some other previous court-reviewed custom census approaches, Keen Independent added several layers of screening to determine which businesses are potentially available for work in the Oregon transportation contracting industry.

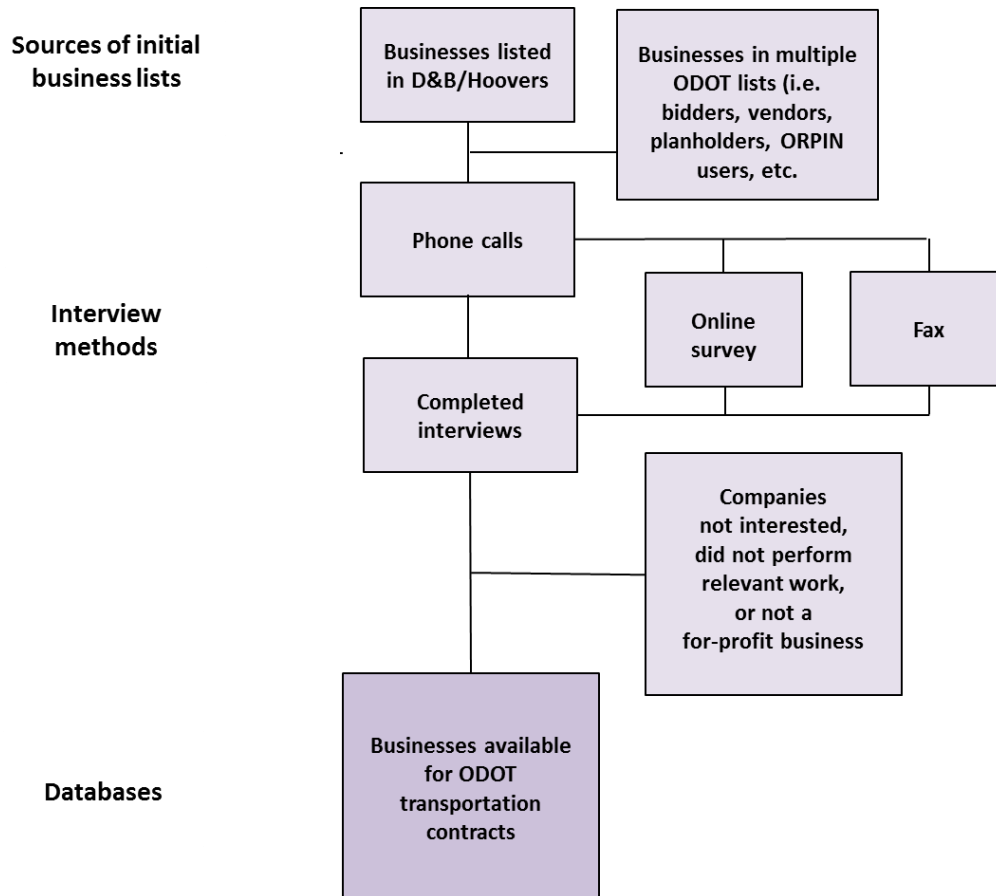
For example, the Keen Independent analysis included discussions with businesses about interest in ODOT and local government work, whether they had bid on or performed similar work in the past, contract role and geographic locations of their work — items not included in some of the previous court-reviewed custom census approaches. Keen Independent also analyzed the sizes of contracts and subcontracts that businesses have bid on or performed in the past (referred to as “bid capacity” in this analysis).

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<sup>4</sup> The study team offered business representatives the option of completing surveys via fax or email if they preferred not to complete surveys via telephone.

<sup>5</sup> D&B’s Hoover’s database is accepted as the most comprehensive and complete source of business listings in the nation. Keen Independent collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most related to the transportation contracts that ODOT awarded during the study period.

Figure 6-3.  
Availability survey process



**Telephone surveys.** Figure 6-3 outlines the process Keen Independent used to complete surveys with businesses possibly available for ODOT and local agency transportation-related work.

- The study team contacted firms by telephone to ask them to participate in the surveys (identifying ODOT as the organization requesting the information). Firms indicating over the phone that they were not interested or not involved in transportation contracting work were not asked to complete the other survey questions. Surveys for the 2016 Disparity Study began in June 2015 and were completed in August 2015.
- Some firms completed surveys when first contacted. For firms not immediately responding, the study team executed intensive follow-up over many weeks.
- When a business was unable to conduct the survey in English, the study team called back with a bilingual interviewer (English/Spanish) to collect basic information about the company and offer alternative means of completing the survey.

- Businesses could also learn about the availability surveys or complete the surveys via other methods such as:
  - Fax or email; and
  - Through the disparity study website that was maintained throughout the project. (Interested companies that learned about the surveys through the website or other means could complete the questionnaire online.)

**Information collected in availability surveys.** Survey questions covered many topics about each organization, including:

- Status as a private business (as opposed to a public agency or not-for-profit organization);
- Status as a subsidiary or branch of another company;
- Types of transportation contract work performed, from asphalt paving to temporary traffic control for construction, and from design engineering to surveying for engineering-related work (Figure 3-4 in Chapter 3 provides a list of work categories included in the surveys);
- Qualifications and interest in performing transportation-related work for ODOT and local agencies in Oregon;
- Qualifications and interest in performing transportation-related work as a prime contractor or as a subcontractor (or trucking company or materials supplier);
- Past work in Oregon as a prime contractor or as a subcontractor, trucker or supplier;
- Ability to work in specific geographic regions (Portland/Hood River region, Willamette Valley and Northwest Oregon region, Southwestern Oregon, Central Oregon and Eastern Oregon);
- Largest prime contract or subcontract bid on or performed in Oregon in the previous five years;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

Appendix D provides an availability survey instrument.

**Screening of firms for the availability database.** The study team asked business owners and managers several questions concerning the types of work that their companies performed; their past bidding history; and their qualifications and interest in working on contracts for ODOT and local government agencies, among other topics. Keen Independent considered businesses to be potentially available for ODOT transportation prime contracts or subcontracts if they reported possessing all of the following characteristics:

- a. Being a private business (as opposed to a public agency or not-for-profit organization);
- b. Performing work relevant to transportation contracting;
- c. Having bid on or performed transportation-related prime contracts or subcontracts in Oregon in the previous five years; and
- d. Reporting qualifications for and interest in work for ODOT and/or for local governments.<sup>6</sup>

#### **D. Businesses Included in the Availability Database**

The study team used the availability database to produce availability benchmarks to:

- Determine whether there were any disparities in ODOT and local agency utilization of MBE/WBEs during the study period; and
- Help calculate a base figure for ODOT's overall DBE goals for FHWA contracts.

Data from the availability surveys allowed Keen Independent to develop a representative depiction of businesses that are qualified and interested in the highest dollar volume areas of ODOT and local agency transportation-related work, but it should not be considered an exhaustive list of every business that could potentially participate in ODOT and local agency contracts (see Appendix D).

After completing surveys with 7,119 Oregon businesses, the study team reviewed responses to develop a database of information about businesses that are potentially available for ODOT transportation contracting work. The study team's research identified 1,639 businesses reporting that they were available for specific transportation contracts that ODOT and local agencies awarded during the study period. Of those businesses, 446 (27%) were minority- or women-owned. Figure 6-4 presents the number of businesses that the study team included in the availability database for each racial/ethnic and gender group.

Because the results in Figure 6-4 are based on a simple count of firms with no analysis of availability for specific ODOT contracts, they only reflect the first step in the availability analysis.

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<sup>6</sup> For both ODOT and for local agency work, separate survey questions were asked about prime contract work and subcontract work.



Figure 6-4.  
Number of businesses included in the availability database

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

Source:  
Keen Independent availability analysis.

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	38	2.3 %
Asian-Pacific American-owned	27	1.6
Subcontinent Asian American-owned	15	0.9
Hispanic American-owned	57	3.5
Native American-owned	35	2.1
Total MBE	172	10.5 %
WBE (white women-owned)	274	16.7
Total MBE/WBE	446	27.2 %
Total majority-owned firms	1,193	72.8
Total firms	1,639	100.0 %

### E. MBE/WBE Availability Calculations on a Contract-by-Contract Basis

Keen Independent analyzed information from the availability database to develop dollar-weighted availability estimates for use as a benchmark in the disparity analysis and in helping ODOT set its overall DBE goals for FHWA-funded contracts.

- Dollar-weighted availability estimates represent the percentage of ODOT transportation contracting dollars that MBE/WBEs might be expected to receive based on their availability for specific types and sizes of ODOT transportation-related construction and engineering prime contracts and subcontracts.
- Keen Independent’s approach to calculating availability is a bottom up, contract-by-contract process of “matching” available firms to specific prime contracts and subcontracts.

**Steps to calculating availability.** Only a portion of the businesses in the availability database were considered potentially available for any given ODOT construction or engineering prime contract or subcontract (referred to collectively as “contract elements”). The study team first examined the characteristics of each specific contract element, including type of work, location of work, contract size and contract date. The study team then identified businesses in the availability database that perform work of that type, in that location, of that size, in that role (i.e., prime contractor or subcontractor), and that were in business in the year that the contract element was awarded.

**Steps to the availability calculations.** The study team identified the specific characteristics of each of the 8,027 ODOT and local agency prime contracts and subcontracts included in the utilization analysis and then took the following steps to calculate availability for each contract element:

1. For each contract element, the study team identified businesses in the availability database that reported in the telephone or online survey that they:
  - Are qualified and interested in performing transportation-related work in that particular role, for that specific type of work, for that particular type of agency (ODOT or local agencies) or had actually performed work in that role based on contract data for the study period;

- Had performed work in the particular role (prime or sub) in Oregon within the past five years (or had done so based on contract data for the study period);
  - Are able to do work in that geographic location (or had done so based on contract data for the study period);
  - Had bid on or performed work of that size in Oregon in the past five years (or had done so based on contract data for the study period); and
  - Were in business in the year that the contract or task order was awarded.
2. For the specific contract element, the study team then counted the number of MBEs (by race/ethnicity), WBEs and majority-owned businesses among all businesses in the availability database that met the criteria specified in step 1 above.
  3. The study team translated the numeric availability of businesses for the contract element into percentage availability (as described in Figure 6-5).

The study team repeated those steps for each contract element examined in the Disparity Study. The study team multiplied the percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of overall availability of MBE/WBEs and estimates of availability for each MBE/WBE group. Figure 6-5 provides an example of how the study team calculated availability for a specific subcontract in the study period.

**Special considerations for supply contracts.**

When calculating availability for a particular type of materials supplies, Keen Independent counted as available all firms supplying those materials that reported qualifications and interest in that work for ODOT (or for local agencies when it was a local agency contract) and indicated that they could provide supplies in the pertinent region of the state. Bid capacity was not considered in these calculations.

**Improvements on a simple “head count” of businesses.** Keen Independent used a dollar-weighted approach to calculating MBE/WBE availability for ODOT and local agency work rather than using a simple “head count” of MBE/WBEs (i.e., simply calculating the percentage of all Oregon transportation contracting businesses that are minority- or women-owned). Using a dollar-

**Figure 6-5.**  
Example of an availability calculation

One of the subcontracts examined was for excavation (\$42,650) on a 2010 FHWA-funded contract for a local agency in Southwest Oregon. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- a. Were in business in 2010;
- b. Indicated that they performed excavation on transportation-related projects;
- c. Reported working or bidding on subcontracts in Oregon in the past five years;
- d. Reported bidding on work of similar or greater size in the past five years;
- e. Reported ability to perform work in Southwest Oregon; and
- f. Reported qualifications and interest in working as a subcontractor on local government transportation projects.

There were 250 businesses in the availability database that met those criteria. Of those businesses, 54 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 22 percent (i.e.,  $54/250 = 24\%$ ).

The weight applied to this contract was  $\$42,650 \div \$1.9 \text{ billion} = 0.002\%$  (equal to its share of total FHWA-funded contract dollars). Keen Independent made this calculation for each prime contract and subcontract.

weighted approach typically results in lower availability estimates for MBEs and WBEs than a headcount approach due in large part to Keen Independent's consideration of types and sizes of work performed measuring availability, and because of dollar-weighting availability results for each contract element (a large prime contract has a greater weight in calculating overall availability than a small subcontract). The types and sizes of contracts for which MBE/WBEs are available in Oregon tend to be smaller than those of other businesses. Therefore, MBE/WBEs are less likely to be identified as available for the largest prime contracts and subcontracts.

There are several important ways in which Keen Independent's dollar-weighted approach to measuring availability is more precise than completing a simple head count approach.

**Keen Independent's approach accounts for type of work.** USDOT suggests calculating availability based on businesses' abilities to perform specific types of work. USDOT gives the following example in Part II F of "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program":

*For instance, if 90 percent of your contract dollars will be spent on heavy construction and 10 percent on trucking, you should weight your calculation of the relative availability of firms by the same percentages.<sup>7</sup>*

The study team took type of work into account by examining 35 different subindustries related to transportation construction, engineering and related purchases as part of estimating availability for ODOT and local agency work.

**Keen Independent's approach accounts for qualifications and interest in transportation-related prime contract and subcontract work.** The study team collected information on whether businesses are qualified and interested in working as prime contractors, subcontractors, or both on ODOT and local agency transportation work, in addition to the consideration of several other factors related to prime contracts and subcontracts (e.g., contract types, sizes and locations):

- Only businesses that reported being qualified for and interested in working as prime contractors were counted as available for prime contracts (or included because contract data for ODOT or local agencies indicated that they had prime contracts in the past five years).
- Only businesses that reported being qualified for and interested in working as subcontractors were counted as available for subcontracts (or included because contract data for ODOT or local agencies indicated that they had subcontracts in the past five years).
- Businesses that reported being qualified for and interested in working as both prime contractors and subcontractors were counted as available for both prime contracts and subcontracts.

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<sup>7</sup> Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. (2013, June 25). Available at <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

**Keen Independent’s approach accounts for the size of prime contracts and subcontracts.** The study team considered the size — in terms of dollar value — of the prime contracts and subcontracts that a business bid on or received in the previous five years (i.e., bid capacity) when determining whether to count that business as available for a particular contract element. When counting available businesses for a particular prime contract or subcontract, the study team considered whether businesses had previously bid on or received at least one contract of an equivalent or greater dollar value in Oregon in the previous five years, based on the most inclusive information from survey results and analysis of past ODOT and local agency prime contracts and subcontracts.

Keen Independent’s approach is consistent with many recent, key court decisions that have found relative capacity measures to be important to measuring availability (e.g., *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*; *Western States Paving Company v. Washington State DOT*; *Rothe Development Corp. v. U.S. Department of Defense*,<sup>8</sup> and *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*).<sup>9</sup>

**Keen Independent’s approach accounts for the geographic location of the work.** The study team determined the location where work was performed for ODOT and local agency contracts: Portland/Hood River (Region 1), Willamette Valley and Northwest Oregon (Region 2), Southwestern Oregon (Region 3), Central Oregon (Region 4) and Eastern Oregon (Region 5).

**Keen Independent’s approach generates dollar-weighted results.** Keen Independent examined availability on a contract-by-contract basis and then dollar-weighted the results for different sets of contract elements. Thus, the results of relatively large contract elements contributed more to overall availability estimates than those of relatively small contract elements. This approach is consistent with USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program,” which suggests a dollar-weighted approach to calculating availability.

## **F. Availability Results**

Keen Independent used the approach described above to estimate the availability of MBE/WBEs and majority-owned businesses for FHWA- and state-funded prime contracts and subcontracts that ODOT and local agencies awarded during the study period.

Figure 6-6 presents overall dollar-weighted availability estimates by MBE/WBE group for those contracts. Overall, MBE/WBE availability for FHWA-funded contracts is 19.29 percent. This result is lower than the percentage of availability firms that are MBE/WBE (27%) in Figure 6-4. Dollar-weighted availability was less for minority-owned firms (9.47%) than white women-owned firms (9.82%). Availability was 2.92 percent for African American-owned businesses, 2.78 percent for Native American-owned firms and 2.31 percent for Hispanic-owned businesses. Dollar-weighted availability was 0.83 percent for Asian-Pacific American-owned businesses and 0.62 percent for Subcontinent Asian American-owned firms.

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<sup>8</sup> *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

<sup>9</sup> *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996).

As shown in the center column of Figure 6-6, dollar-weighted availability estimates for state-funded contracts during the study period (19.01% for MBE/WBEs combined) is about the same as FHWA-funded contracts (19.29%).

Overall MBE/WBE availability (19.24%) is shown in the right-hand column of Figure 6-6. Results are very similar to availability results for FHWA-funded contracts.

Figure 6-6.  
Overall dollar-weighted availability estimates for MBE/WBEs for ODOT FHWA- and state-funded contracts, October 2010-September 2014

Race/ethnicity and gender	FHWA	State	Total
African American-owned	2.92 %	2.59 %	2.86 %
Asian-Pacific American-owned	0.83	1.04	0.86
Subcontinent Asian American-owned	0.62	0.81	0.66
Hispanic American-owned	2.31	2.09	2.27
Native American-owned	<u>2.78</u>	<u>2.34</u>	<u>2.71</u>
Total MBE	9.47 %	8.86 %	9.37 %
WBE (white women-owned)	<u>9.82</u>	<u>10.15</u>	<u>9.88</u>
Total MBE/WBE	19.29 %	19.01 %	19.24 %

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

Source: Keen Independent availability analysis.

### G. Base Figure for ODOT’s Overall DBE Goal for FHWA-funded Contracts

Establishing a base figure is the first step in calculating an overall goal for DBE participation in ODOT’s FHWA-funded contracts. For the base figure for FHWA-funded contracts, calculations focus on current and potential DBEs.

Keen Independent’s approach to calculating ODOT’s base figure is consistent with:

- Court-reviewed methodologies in several states, including Washington, California, Illinois and Minnesota;
- Instructions in The Final Rule effective February 28, 2011 that outline revisions to the Federal DBE Program; and
- USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

**Base figure for FHWA-funded contracts.** As discussed above, Keen Independent’s availability analysis indicates that the dollar-weighted availability of minority- and women-owned firms for ODOT’s FHWA-funded transportation contracts is 19.29 percent based on current availability information and analysis of FHWA-funded ODOT and local agency contracts awarded from October 2010 through September 2014.

Calculations to convert MBE/WBE availability to current and potential DBEs for the base figure. Figure 6-7 provides the calculations to derive current/potential DBE availability when starting from the 19.29 percent MBE/WBE availability figure.

For FHWA-funded contracts, there were three groups of MBE/WBEs that Keen Independent did not count as potential DBEs when calculating the base figure:

- **Graduated or been denied DBE certification.** Keen Independent did not include MBE/WBEs that in recent years graduated from the DBE Program or had applied for DBE certification in Oregon and had been denied (based on information supplied by ODOT’s Office of Civil Rights). This was three firms.
- **Revenue exceeding DBE limits.** The study team did not count MBE/WBEs in the availability surveys reported having average annual revenue over the most recent three years (at the time of the 2015 survey) that exceeded the revenue limits for DBE certification for their subindustry (as of 2015). This was 18 firms.
- **BOLI list.** Also excluded were MBE/WBEs in the availability surveys that were prohibited for work for any portion of the FFY 2017 through FFY 2019 time period based on their inclusion on the Oregon Bureau of Labor and Industries (BOLI) List of Contractors Ineligible to Receive Public Works Contracts (as of November 2, 2015). This was one firm.

Adjusting for these three categories of MBE/WBEs reduces the base figure for FHWA-funded contracts by 3.45 percentage points (see Figure 6-7). The base figure for ODOT’s overall DBE goal is 15.84 percent. It represents the level of current/potential DBE participation anticipated based on analysis of FHWA-funded contracts from October 2010 through September 2014.

Figure 6-7.  
Overall dollar-weighted availability estimates for current and potential DBEs for FHWA-funded contracts, October 2010-September 2014

Calculation of base figure	FHWA
Total MBE/WBE	19.29 %
Less firms that graduated from the DBE Program or denied DBE certification in recent years or exceed revenue thresholds or on BOLI list	<u>3.45</u>
Subtotal	15.84 %
Plus white male-owned DBEs	<u>--</u>
Current and potential DBEs	15.84 %

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

Source: Keen Independent availability analysis.

Because the 15.84 percent figure is based on FHWA-funded contracts from October 2010 through September 2014, if ODOT's mix of projects (such as size and location) were to substantially change for the FFY 2017 through FFY 2019 period, it might affect the overall base figure.

**Dollar-weighted availability of current DBEs.** Keen Independent also calculated the base figure if it only counted current DBEs. "Potential DBEs" are included in the analysis, but counted as non-DBEs. The calculation removes firms on the current BOLI list of ineligible contractors from the availability analysis altogether.

The base figure would be 6.00 percent if limited to currently-certified DBEs.

**Additional steps before ODOT determines its overall DBE goals for FHWA-funded contracts.**

As discussed in Chapter 9, ODOT must consider whether to make a step 2 adjustment to the base figure as part of determining its overall DBE goal for FHWA-funded contracts. Step 2 adjustments can be upward or downward, but there is no requirement for ODOT to make a step 2 adjustment as long as the agency can explain the factors considered and why no adjustment was warranted.

Chapter 9 discusses factors that ODOT might consider in deciding whether to make a step 2 adjustment to the base figures for FHWA-funded contracts.