

APPENDIX A.

Definition of Terms

Appendix A provides explanations and definitions useful to understanding the 2016 Disparity Study. The following definitions are only relevant in the context of this report.

A&E. “A&E” refers to architecture and engineering (i.e., “A&E contracts”).

Anecdotal evidence. Anecdotal evidence includes personal accounts and perceptions of incidents, including any incidents of discrimination, told from each individual interviewee’s or participant’s perspective.

Availability analysis. The availability analysis examines the number of minority-, women-owned and majority-owned businesses ready, willing, and able to perform transportation-related construction and engineering work for ODOT or local agencies in Oregon.

“Availability” is often expressed as the percentage of contract dollars that might be expected to go to minority- or women-owned firms based on analysis of the specific type, location, size and timing of each ODOT prime contract and subcontract and the relative number of minority- and women-owned firms available for that work.

Business. A business is a for-profit enterprise, including all of its establishments (synonymous with “firm” and “company”).

Business establishment. A business establishment (or simply, “establishment”) is a place of business with an address and working phone number. One business can have many business establishments.

Business listing. A business listing is a record in the Dun & Bradstreet (D&B) database (or other database) of business information. A D&B record is a “listing” until the study team determines it to be an actual business establishment with a working phone number.

Certification Office of Business Inclusion and Diversity (COBID). As of January 1, 2016, the Certification Office of Business Inclusion and Diversity or “COBID” is the new name for the Office of Minority, Women and Emerging Small Business (OMWESB). COBID is the certification authority for certification of minority- and women-owned firms, Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises (ACDBEs) and Emerging Small Businesses (ESBs) in Oregon. COBID also administers new Service Disabled Veteran (SDV) certification.

Code of Federal Regulations or CFR. Code of Federal Regulations (“CFR”) is a codification of the federal agency regulations. An electronic version can be found at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Contract. A contract is a legally binding agreement between the seller of goods or services and a buyer.

Contract element. A contract element is either a prime contract or subcontract that the study team included in its analyses.

Consultant. A consultant is a business performing professional services contracts.

Contractor. A contractor is a business performing construction contracts.

Controlled. Controlled means exercising management and executive authority for a business.

Disadvantaged Business Enterprise (DBE). A small business that is 51 percent or more owned and controlled by one or more individuals who are both socially and economically disadvantaged according to the guidelines in the Federal DBE Program (49 CFR Part 26). Members of certain racial and ethnic groups identified under “minority-owned business enterprise” in this appendix may meet the presumption of social and economic disadvantage. Women are also presumed to be socially and economically disadvantaged. Examination of economic disadvantage also includes investigating the three-year average gross revenues and the business owner’s personal net worth (at the time of this report, a maximum of \$1.32 million excluding equity in the business and primary personal residence).

Some minority- and women-owned businesses do not qualify as DBEs because of gross revenue or net worth limits.

A business owned by a non-minority male may also be certified as a DBE on a case-by-case basis if the enterprise meets its burden to show it is owned and controlled by one or more socially and economically disadvantaged individuals according to the requirements in 49 CFR Part 26.

Disparity. A disparity is an inequality, difference, or gap between an actual outcome and a reference point or benchmark. For example, a difference between an outcome for one racial or ethnic group and an outcome for non-minorities may constitute a disparity.

Disparity analysis. A disparity analysis compares actual outcomes with what might be expected based on other data. Analysis of whether there is a “disparity” between the utilization and availability of minority- and women-owned businesses is one tool used to examine whether there is evidence consistent with discrimination against such businesses.

Disparity index. A disparity index is a measure of the relative difference between an outcome, such as percentage of contract dollars received by a group, and a corresponding benchmark, such as the percentage of contract dollars that might be expected given the relative availability of that group for those contracts. In this example, it is calculated by dividing percent utilization (numerator) by percent availability (denominator) and then multiplying the result by 100. A disparity index of 100 indicates “parity” or utilization “on par” with availability. Disparity index figures closer to 0 indicate larger disparities between utilization and availability. For example, the disparity index would be “50” if the utilization of a particular group was 5 percent of contract dollars and its availability was 10 percent.

Dun & Bradstreet (D&B). D&B is the leading global provider of lists of business establishments and other business information (see www.dnb.com). Hoover’s is the D&B company that provides these lists. Obtaining a DUNS number and being listed by D&B is free to listed companies; it does not require companies to pay to be listed in its database.

eBIDS. Electronic Bidding Information Distribution System, ODOT’s online bidding system for highway construction projects.

Emerging Small Business (ESB). Emerging small businesses (ESBs) are those certified by the State of Oregon as small businesses, with a time limit for participation in the program (hence “emerging”). Certification is limited to for-profit firms, not part of a larger company, with a principal place of business in Oregon. ESB certification includes two tiers:

- Tier 1 for businesses with 19 or fewer employees that have average annual gross receipts below \$1,846,996 for construction businesses or \$738,798 for non-construction firms; and
- Tier 2 for businesses with 29 or fewer employees that have annual gross receipts less than \$3,693,992 for construction firms or \$1,231,331 for non-construction firms. (Values are as of the time of this report.)

Employer firms. Employer firms are firms with paid employees other than the business owner and family members.

Engineering-related services. For purposes of this study, services such as surveying, transportation planning, environmental consulting, construction management and certain related professional services.

Enterprise. An enterprise is an economic unit that is a for-profit business or business establishment, not-for-profit organization or public sector organization.

ESB. See “Emerging Small Business.”

Establishment. See “business establishment.”

Federal Disadvantaged Business Enterprise (DBE) Program. Federal DBE Program refers to the Disadvantaged Business Enterprise Program established by the United States Department of Transportation after enactment of the Transportation Equity Act for the 21st Century (TEA-21) as amended in 1998. The regulations for the Federal DBE Program are set forth in 49 CFR Part 26.

Federal Highway Administration (FHWA). The FHWA is an agency of the United States Department of Transportation that works with state and local governments to construct, preserve, and improve the National Highway System, other roads eligible for federal aid, and certain roads on federal and tribal lands.

Federal Transit Administration (FTA). The FTA is an agency of the United States Department of Transportation that administers federal funding to support local public transportation systems including buses, subways, light rail and passenger ferry boats.

Firm. See “business.”

Federally-funded contract. A federally-funded contract is any contract or project funded in whole or in part (a dollar or more) with United States Department of Transportation financial assistance, including loans. As used in this study, it is synonymous with “USDOT-funded contract.”

Industry. An industry is a broad classification for businesses providing related goods or services.

Local agency. A local agency is any city, county, town, tribal government, regional transportation commission or other local government receiving money through ODOT.

Majority-owned business. A majority-owned business is a for-profit business that is not owned and controlled by minorities or women (see definition of “minorities” below).

MBE. Minority-owned business enterprise. See minority-owned business.

Minorities. Minorities are individuals who belong to one or more of the racial/ethnic groups identified in the federal regulations in 49 CFR Section 26.5:

- Black Americans (or “African Americans” in this study), which include persons having origins in any of the black racial groups of Africa.
- Hispanic Americans, which include persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- Native Americans, which include persons who are American Indians, Eskimos, Aleuts or Native Hawaiians.
- Asian-Pacific Americans, which include persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia or Hong Kong.
- Subcontinent Asian Americans, which include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

Minority-owned business (MBE). An MBE is a business that is at least 51 percent owned and controlled by one or more individuals that belong to a minority group. Minority groups in this study are those listed in 49 CFR Section 26.5. For purposes of this study, a business need not be certified as such to be counted as a minority-owned business. Businesses owned by minority women are also counted as MBEs in this study (where that information is available). In this study, “MBE-certified businesses” are those that have been certified by the State of Oregon as a minority-owned company.

MWESB Program. The State of Oregon and a number of local governments in Oregon operate a Minority, Women and Emerging Small Business (MWESB) program which encourages utilization of minority- and women-owned firms and emerging small businesses in public contracting and procurement.

North American Industry Classification System (NAICS) codes. NAICS codes identify the primary line of business of a business enterprise. See <http://www.census.gov/epcd/www/naics.html>.

Non-DBEs. Non-DBEs are firms that are not certified as DBEs, regardless of the race/ethnicity or gender of the owner.

Non-response bias. Non-response bias occurs when the observed responses to a survey question differ from what would have been obtained if all individuals in a population, including non-respondents, had answered the question.

Oregon Association of Minority Entrepreneurs (OAME). The Oregon Association of Minority Entrepreneurs is a non-profit, tax-exempt organization focused on the promotion and development of entrepreneurship and economic development for ethnic minorities in the State of Oregon and Southwest Washington.

Oregon Bureau of Labor and Industries (BOLI). Oregon Bureau of Labor and Industries (BOLI) is the state agency responsible for enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations; enforcement of state laws related to wages, hours and terms and conditions of employment; education of employers concerning wage, hour and civil rights laws; and workforce development through apprenticeship programs and other efforts. This agency also maintains the List of Contractors Ineligible to Receive Public Works Contracts.

Oregon Department of Transportation (ODOT). ODOT is the steward of the State of Oregon's transportation system. ODOT is responsible for building, maintaining, and operating the state highway system. In addition, ODOT works with various partners to maintain and improve local transportation infrastructure. ODOT provides other transportation services related to Oregon's roads and bridges, railways, public transportation services, transportation safety, driver and vehicle licensing and motor carrier regulation.

Oregon Office of Minority, Women and Emerging Small Business (OMWESB). The Office of Minority, Women and Emerging Small Business is the certification authority for certification of minority- and women-owned firms, Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises (ACDBEs) and Emerging Small Businesses (ESBs) in Oregon. Beginning January 1, 2016, OMWESB became the Certification Office of Business Inclusion and Diversity (COBID). (See Certification Office of Business Inclusion and Diversity (COBID) on page 1 of this appendix.)

Oregon Procurement Information Network (ORPIN). State of Oregon agencies use the ORPIN program to disseminate notices of certain contracting and procurement opportunities to interested companies that are registered in the system. Many local government agencies in Oregon participate in ORPIN as well.

Owned. Owned indicates at least 51 percent ownership of a company. For example, a "minority-owned" business is at least 51 percent owned by one or more minorities.

Potential DBE. A potential DBE is a minority- or woman-owned business that appears that it could be DBE-certified (and not currently DBE certified) based on revenue requirements specified as part of the Federal DBE Program.

Prime consultant. A prime consultant is a professional services firm that performs a prime contract for an end user, such as ODOT.

Prime contract. A prime contract is a contract between a prime contractor or a prime consultant and the project owner, such as ODOT.

Prime contractor. A prime contractor is a construction firm that performs a prime contract for an end user, such as ODOT.

Project. A project refers to an ODOT or local agency transportation construction and/or engineering endeavor. A project could include one or multiple prime contracts and corresponding subcontracts.

Race- and gender-conscious measures. Race- and gender-conscious measures are programs in which businesses owned by some minority groups or women may participate but majority-owned firms typically may not. A DBE contract goal is one example of a race- and gender-conscious measure.

Note that the term is a shortened version of “race-, ethnicity-, and gender-conscious measures.” For ease of communication, the study team has truncated the term to “race- and gender-conscious measures.”

Race- and gender-neutral measures. Race- and gender-neutral measures apply to businesses regardless of the race/ethnicity or gender of firm ownership. Race- and gender-neutral measures may include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, establishing programs to assist start-up firms, and other methods open to all businesses or any disadvantaged business regardless of race or gender of ownership. A broader list of examples can be found in 49 CFR Section 26.51(b).

Note that the term is more accurately “race, ethnicity, and gender-neutral” measures. However, for ease of communication, the study team has shortened the term to “race- and gender-neutral measures.”

Relevant geographic market area. The relevant geographic market area is the geographic area in which the businesses receiving most ODOT and local agency contracting dollars are located. The relevant geographic market area is also referred to as the “local marketplace.” Case law related to race- and gender-conscious programs requires disparity analyses to focus on the “relevant geographic market area.”¹

Remedial measure. A remedial measure, sometimes shortened to “remedy,” is a program designed to address barriers to full participation of minorities or women, or minority- or women-owned firms.

¹ See, e.g., *Croson*, 448 U.S. at 509; 49 CFR Section 26.35; *Rothe*, 545 F.3d at 1041-1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995.

SBA 8(a). SBA 8(a) is a U.S. Small business Administration business assistance program for small disadvantaged businesses owned and controlled by at least 51 percent socially and economically disadvantaged individuals.

The Service Corps of Retired Executives (SCORE). The Service Corps of Retired Executives (SCORE) is a non-profit, volunteer-run organization that offers small business supportive services and business mentoring nationwide as a resource partner of the U.S. Small Business Administration (SBA). Oregon has SCORE chapters in Central Oregon, Portland, Salem and Willamette.

Service Disabled Veteran (SDV). Effective January 1, 2016, an SDV is a firm certified as owned by a service disabled veteran meeting the criteria of Oregon's Certification Office of Business Inclusion and Diversity (COBID). This new certification is an outcome of legislation passed during the 2015 session that created SDV certification.

Service-Disabled Veteran-Owned Small Business (SDVOSB). A firm certified as a service disabled veteran-owned small business according to the criteria of the federal Service-Disabled Veteran-Owned Small Business Concern (SDVOSBC) Program.

Small business. A small business is a business with low revenues or size (based on revenue or number of employees) relative to other businesses in the industry. "Small business" does not necessarily mean that the business is certified as such.

Small Business Enterprise (SBE). A firm certified as a small business according to the size criteria of the certifying agency.

Small Business Administration (SBA). The SBA refers to the United States Small Business Administration, which is an independent agency of the United States government that assists small businesses.

Small Contracting Program. ODOT's Small Contracting Program (SCP) encourages small business participation as prime contractors in its architectural and engineering (and related services) contracts, construction contracts, and other services contracts.

State-funded contract. A state-funded contract is any contract or project that is entirely funded with State of Oregon, local government and other non-USDOT funds. As these contracts do not include federal funds, the Federal DBE Program does not apply.

Statistically significant difference. A statistically significant difference refers to a quantitative difference for which there is a high probability that random chance can be rejected as an explanation for the difference. This has applications when analyzing differences based on sample data such as most U.S. Census datasets (could chance in the sampling process for the data explain the difference?), or when simulating an outcome to determine if it can be replicated through chance. Often a 95 percent confidence level is applied as a standard for when chance can reasonably be rejected as a cause for a difference.

Subconsultant. A subconsultant is a professional services firm that performs services for a prime consultant as part of the prime consultant's contract for a customer such as ODOT.

Subcontract. A subcontract is a contract between a prime contractor or prime consultant and another business selling goods or services to the prime contractor or prime consultant as part of the prime contractor's contract for a customer such as ODOT.

Subcontract goals program. A program in which a public agency sets a percent goal for participation of DBEs, MBE/WBEs, ESBs, small businesses or another group on a contract. These programs typically require that a bidder either meet the percentage goal with members of the group or show good faith efforts to do so as part of its bid or proposal.

Subcontractor. A subcontractor is a construction firm that performs services for a prime contractor as part of a larger project.

Subrecipient. A subrecipient is a local agency receiving financial assistance from the United States Department of Transportation, passed through ODOT.

Supplier. A supplier is a firm that sells supplies to a prime contractor as part of a larger project (or in some cases sells supplies directly to ODOT).

United States Department of Transportation (USDOT). USDOT refers to the United States Department of Transportation, which includes the Federal Highway Administration, the Federal Transit Administration, the Federal Aviation Administration and the Federal Rail Administration. Note that the Federal DBE Program does not apply to contracts solely using funds from the Federal Rail Administration (at the time of this report).

Utilization. Utilization refers to the percentage of total contracting dollars of a particular type of work going to a specific group of businesses (for example, DBEs).

WBE. Woman-owned business enterprise. See women-owned business.

Women-owned business (WBE). A WBE is a business that is at least 51 percent owned and controlled by one or more individuals that are non-minority women. A business need not be certified as such to be included as a WBE in this study. For this study, businesses owned and controlled by minority women are counted as minority-owned businesses. In this study, a "WBE-certified businesses" is one certified as a woman-owned firm by the State of Oregon.

Women-Owned Small Businesses (WOSB). Under the WOSB Federal Contract Program, "WOSB" designation allows women-owned small businesses to compete on certain federal projects with set-asides in industries where women-owned small businesses are substantially underrepresented. Set-asides are also available on certain federal projects for Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs). This program applies to direct contracts with federal agencies, not on contracts with agencies such as ODOT.