CHAPTER 8.
Further Exploration of MBE/WBE and DBE Utilization on FHWA- and State-funded Contracts

Building upon the analysis presented in Chapter 7, Keen Independent further examines the utilization of minority- and women-owned firms for different types and locations of ODOT contracts in Chapter 8. Chapter 8 also reports participation of DBEs. Results generally focus on FHWA- and state-funded contracts combined. Unless otherwise specified, results combine ODOT and LPA contracts.

Keen Independent presents results as follows:

A. Contracts with DBE contract goals and those without goals;
B. Construction and engineering contracts;
C. ODOT-awarded contracts and local public agency-awarded contracts;
D. ODOT regions;
E. Prime contracts and subcontracts;
F. Construction prime contracts, including analysis of process and case studies of bids;
G. Engineering-related prime contracts, including analysis of process and case studies of proposals;
H. ODOT operation of the Federal DBE Program for FHWA-funded contracts, including overconcentration analysis; and
I. Summary of results.

A. Contracts With and Without DBE Contract Goals

As discussed in Chapters 1 and 4, ODOT sets DBE contract goals during different portions of the study period on some FHWA-funded contracts. Other FHWA-funded contracts, and all state-funded contracts, did not have DBE contract goals.

MBE/WBE participation. MBE/WBE participation was 15.3 percent on contracts with DBE contract goals and 9.2 percent on FHWA- and state-funded contracts without DBE contract goals. Figure 8-1 on the following page provides this information.

DBE participation. Keen Independent's analysis shows higher DBE utilization on contracts with DBE contract goals than those without contract goals. As shown in Figure 8-1, 10.0 percent of contract dollars went to DBEs when ODOT set a DBE contract goal. Without DBE contract goals, DBE participation was 5.1 percent (5.0% on FHWA-funded contracts). ODOT might consider this 5.1 percent participation when projecting the amount of DBE participation it can achieve through neutral means (see Chapter 10).

Figure 8-1.
MBE/WBE and DBE share of dollars for contracts with and without DBE contract goals, October 2010–September 2014

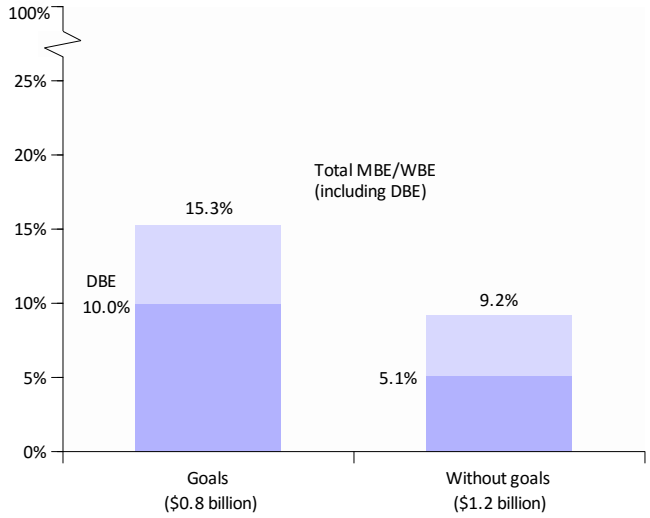
Note:

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is 1,980 with DBE contract goals and 6,047 without contract goals.

Source:

Keen Independent from data on ODOT and LPA FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.



Disparity analysis for contracts with DBE goals indicated that it did not fully eliminate the disparity for MBE/WBEs (disparity index of 86), perhaps because participation in the DBE contract goals program for construction contracts was limited to two DBE groups. The disparity index for MBE/WBEs for contracts without DBE contract goals was 46.

B. Construction and Engineering Contracts

Figure 8-2 presents MBE/WBE participation for construction contracts and engineering-related contracts. Overall, MBE/WBE participation was higher on construction contracts (about 12.4%) than engineering-related contracts (6.3%).

Participation of DBEs was also higher on construction contracts than engineering-related contracts (7.7% compared with 2.9%).

Figure 8-2.
MBE/WBE and DBE share of dollars for construction and engineering contracts, October 2010–September 2014

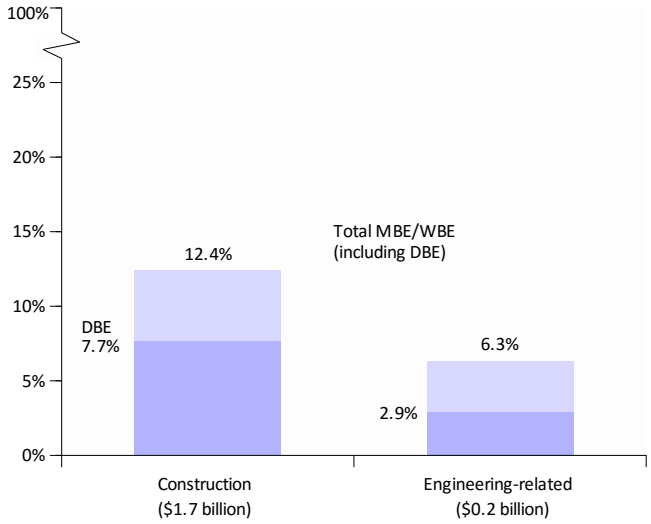
Note:

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is 5,877 for construction and 2,150 for engineering-related contracts.

Source:

Keen Independent from data on ODOT and LPA FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.



There were disparities between MBE/WBE utilization and availability for both construction and engineering contracts.

- The 12.4 percent MBE/WBE utilization on construction contracts was substantially below the 19.3 percent availability for those contracts, with a disparity index of 65.
- Based on 19.1 percent MBE/WBE availability for engineering-related contracts, there was a substantial disparity for MBE/WBEs on these contracts as well (disparity index of 33).

C. ODOT Contracts and Local Public Agency (LPA) Contracts

Keen Independent also examined results for ODOT contracts and local public agency (LPA) contracts. In terms of dollars, most of the FHWA- and all of the state-funded transportation contracts examined in this disparity study were for ODOT projects ($1.7 billion). LPA contracts totaled $184 million.

As shown in Figure 8-3, MBE/WBE and DBE participation was considerably higher on LPA contracts than ODOT contracts. All of the LPA contracts had FHWA funding and often had DBE contract goals applied. MBE/WBE utilization for LPA contracts (18.5%) was more than availability (17.3%), with a disparity index of 107.

MBE/WBE utilization on ODOT-awarded contracts (10.9%) was substantially less than availability (19.5%), and the disparity index was 56.

Figure 8-3.
MBE/WBE and DBE share of dollars for ODOT and LPA projects, October 2010–September 2014

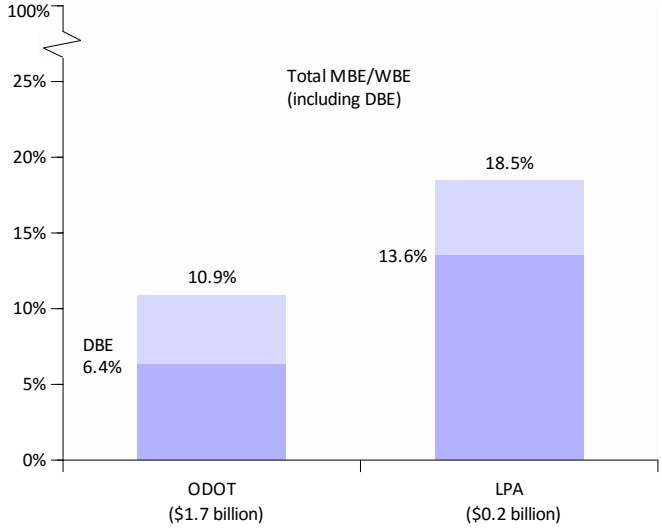
Note:

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is 7,417 for ODOT contracts and 610 for LPA contracts.

Source:

Keen Independent from data on ODOT and LPA FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.

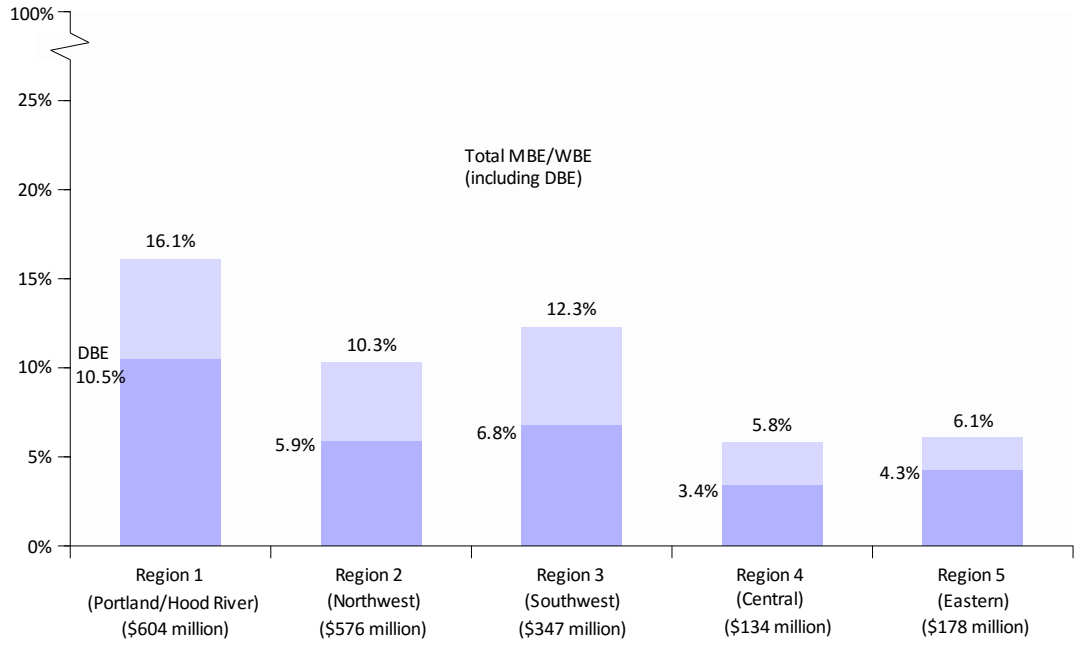


D. ODOT Regions

Keen Independent examined MBE/WBE and DBE utilization in each ODOT region. Projects spanning two regions are counted in each, but statewide contracts are not shown. Figure 8-4 includes FHWA- and state-funded construction and engineering-related contracts from October 1, 2010 through September 30, 2014.

- MBE/WBE utilization participation (16%) and DBE participation (11%) were highest in Region 1, which includes the Portland area.
- MBE/WBE and DBE participation were lowest in Central and Eastern Oregon (Regions 4 and 5). In those regions, about 6 percent of contract dollars went to MBE/WBEs and 3 to 4 percent went to DBEs.
- Regions 2 and 3 showed MBE/WBE participation in the range of 10 to 12 percent and DBE participation was about 6 to 7 percent.

Figure 8-4. MBE/WBE and DBE share of dollars for contracts by ODOT region, October 2010–September 2014



Note: Dark portion of bar is certified DBE utilization. Number of contracts/subcontracts analyzed is: Region 1 (2,542), 2 (2,267), 3 (1,333), 4 (692) and 5 (646).

Source: Keen Independent from data on FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.

There was some variation in MBE/WBE availability between regions (Region 1 had higher MBE availability), but because many MBE/WBE and majority-owned companies indicated in the survey that they worked in multiple regions and were counted as available for work in those regions (or statewide), it was usually less than 1 percentage point different from the overall availability figure for ODOT. The mix and sizes of contracts and subcontracts also affected the availability results in each region.

There were disparities between MBE/WBE utilization and availability for each region, even with the application of DBE contract goals for some contracts in each region.

- The disparity index for MBE/WBEs for contracts in Region 1 was 83, a disparity even with the application of DBE goals for some contracts.
- The disparity indices were 57 and 64 for Regions 2 and 3, respectively.
- There were also substantial disparities for MBE/WBEs in Region 4 (index of 28) and Region 5 (index of 31).

E. Prime Contracts and Subcontracts

Keen Independent examined the percentage of subcontract dollars going to MBE/WBEs and DBEs. The study team performed similar analyses for dollars retained by prime contractors. Figure 8-5 presents results of this research.

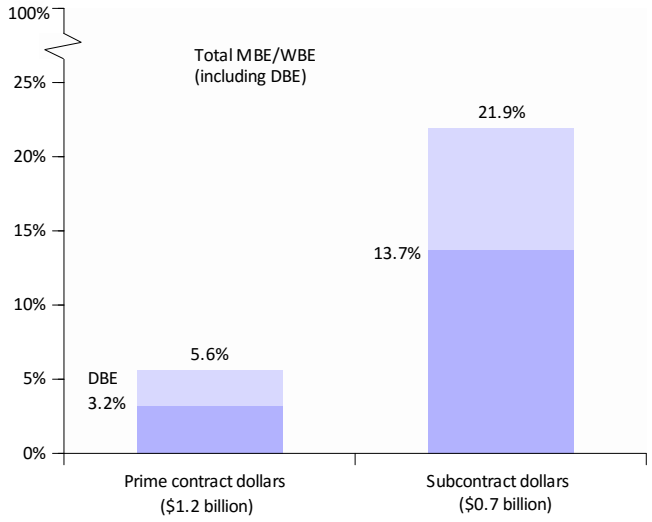
Subcontracts. Subcontracts accounted for about one-third of the total contract dollars examined in this study. (Results combine ODOT and LPA construction and engineering-related subcontracts.) MBE/WBEs obtained about 22 percent of ODOT subcontract dollars and majority-owned firms received 78 percent of subcontract dollars. DBEs accounted for 13.7 percentage points of the overall utilization of MBE/WBEs in ODOT subcontracts.

Prime contracts. The study team also analyzed dollars going to prime contractors based on amounts retained by prime contractors after subtracting the value of subcontracts. MBE/WBEs received 5.6 percent of prime contract dollars. DBEs accounted for 3.2 percent of total prime contract dollars.

Figure 8-5.
MBE/WBE and DBE share of dollars for prime contracts and subcontracts, October 2010–September 2014

Note:
Dark portion of bar is certified DBE utilization.
Number of prime contracts analyzed is 2,219.
Number of subcontracts analyzed is 5,808.

Source:
Keen Independent from data on ODOT and LPA FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.



The disparity index for MBE/WBEs for subcontracts was 90 (21.9% utilization and 24.3% availability). Utilization on subcontracts with and without DBE contract goals is discussed later in this chapter.

There was a substantial disparity between utilization (5.6%) and availability (16.3%) for MBE/WBEs as prime contractors; the disparity index was 35.

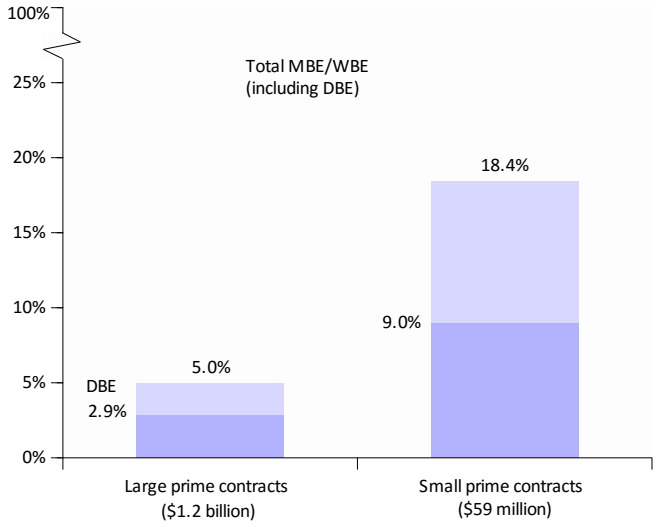
Large and small prime contracts. Keen Independent further analyzed MBE/WBE and DBE participation on prime contracts by examining large and small prime contracts during the study period. (Utilization is based on dollars retained by the prime.) "Large" contracts were those of $100,000 or more for construction and $150,000 or more for engineering:

- As shown in Figure 8-6, MBE/WBEs received 5.0 percent of prime contract dollars on large contracts (2.9% for DBEs); and
- On small contracts, 18.4 percent of prime contract dollars went to minority- and women-owned firms (9.0% for DBEs).

Figure 8-6.
MBE/WBE and DBE share of dollars for large and small prime contracts, October 2010–September 2014

Note:
Dark portion of bar is certified DBE utilization.
Number of prime contracts analyzed is 989 for large contracts and 1,230 for small contracts.

Source:
Keen Independent from data on ODOT and LPA FHWA- and state-funded prime contracts and subcontracts, October 2010-September 2014.



There were substantial disparities between the MBE/WBE utilization and availability as prime contractors on both large and small prime contracts (disparity indices of 31 for large contracts and 83 for small contracts).

F. Analysis of Potential Barriers to MBE/WBE/DBE Participation in ODOT Construction Contracts

Keen Independent analyzed participation of minority- and women-owned firms as prime contractors on ODOT construction contracts during the October 2010-September 2014 study period.

Utilization of MBE/WBEs and DBEs as prime contractors on ODOT construction contracts. Minority- and women-owned firms won 256 or 19 percent of the 1,357 FHWA- and state-funded construction prime contracts during the study period.[1] (Based on headcount, 23 percent of firms available for ODOT construction prime contracts are MBE/WBEs).

[1] Of these construction contracts, 1,311 were awarded by ODOT.

Because MBE/WBEs won smaller contracts, on average, MBE/WBEs only received 5.9 percent of construction prime contract dollars, or $61 million out of $1.03 billion of the dollars retained by prime contractors (i.e., not subcontracted). DBEs won 133 construction prime contracts totaling $37 million during the study period (3.6% of the total dollars). Figure 8-7, below, shows these results.

Utilization of MBE/WBEs and DBEs as prime contractors on large and small construction contracts. Keen Independent examined number and dollars of construction prime contracts going to MBE/WBEs and DBEs for large contracts ($100,000 or more) and small contracts (less than $100,000).

Large contracts. Of the 706 large construction contracts, MBE/WBEs won 66 contracts, or 9 percent of the total. MBE/WBEs accounted for 5.3 percent of prime contractor dollars. The disparity index for MBE/WBEs was 34 for large construction prime contracts, indicating a substantial disparity.

Most of the MBE/WBE utilization was a small number of Hispanic American-owned construction firms (more than three-quarters of MBE/WBE utilization on large prime contracts).

DBEs were awarded 33 of these large prime contracts (3.3% of dollars).

Small contracts. MBE/WBE prime contractors were awarded 190, or one-quarter, of the 651 construction contracts less than $100,000. MBE/WBE received 26.5 percent of contract dollars. The higher utilization of MBE/WBEs on smaller ODOT contracts might be in part due to ODOT's Small Contracting Program (discussed later in this chapter). Of the 651 small contracts, 100 (or 15%) were awarded to DBEs. About 13.8 percent of small construction prime contract dollars went to DBEs.

MBE/WBE utilization as prime contractors was higher than the 24.2 percent that might be expected based on the availability analysis for these prime contracts (disparity index of 110).

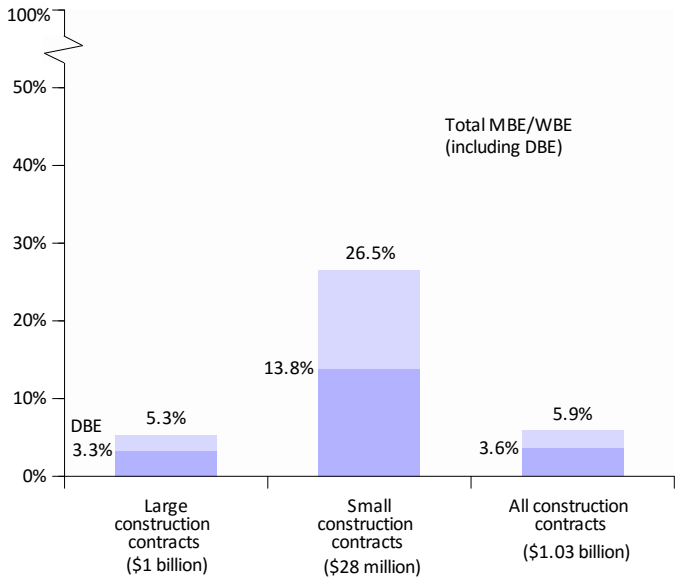
Figure 8-7.
MBE/WBE and DBE share of dollars of construction prime contracts, October 2010–September 2014

Note:

Number of prime contracts analyzed is 706 for large contracts and 651 for small contracts. Number of prime contracts analyzed for all contracts is 1,357.

Source:

Source: Keen Independent Research from ODOT contract records.



Small Contracting Program (SCP). Keen Independent identified 139 ODOT construction contracts during the study period for which the Small Contracting Program applied. ODOT designed these contracts to be open to small firms, many of which are minority- and women-owned. Fifty-one of these under $100,000 contracts went to MBE/WBEs, accounting for 40.0 percent of SCP prime contract dollars for construction. This utilization exceeded what was expected based on availability (24.6%). By comparison, 29 percent of construction contracts less than $100,000 went to MBE/WBEs when the SCP was not used as the contracting method.

DBEs were awarded 21.4 percent of the contract dollars under SCP for construction.

Emerging Small Business (ESB) Program. Keen Independent identified 117 ODOT construction contracts during the study period for which the Emerging Small Business Program applied. These projects are set aside for exclusive bidding by certified ESB firms. Thirty-four of the ESB construction contracts went to MBE/WBEs. MBE/WBEs received 24.7 of those contract dollars. This utilization was in line with what was expected based on availability (24.4%). The disparity index was 101.

ODOT bid process for construction contracts. ODOT generally awards construction contracts to low bidders (that are deemed responsive and responsible). It is possible that some aspects of the bidding process present barriers to small business participation as prime contractors, including for MBE/WBEs. (However, under the Small Contracting Program for construction contracts, ODOT can select a group of registered firms to bid on certain construction contracts of less than $100,000.)

Keen Independent examined ODOT requirements for bidding on its construction contracts, processes for notifying potential bidders of construction contract opportunities, and methods for selecting a prime contractor to perform the work in order to explore this possibility.

State code. Oregon Revised Statute Chapter 279A, 279B and 279C governs public contracting, public improvements and related contracts. ODOT follows these requirements and other state law pertaining to public works contracts in its contracting practices.

Bonding. Bid, payment and performance bonds are required under Oregon state law for public improvement contracts in excess of $100,000 or in excess of $50,000 in the case of contracts for highways, bridges and other transportation projects. Bid bonds may not exceed 10 percent of the proposed bid. (ODOT can waive bid bonds on small contracts.) In-depth interviews with business owners and managers and the results of the availability interviews with Oregon businesses identified bonding as a barrier for minority- and women-owned firms (see Chapter 5 and Appendix J).

Advertisement of invitations to bid. Public bidding of ODOT construction contracts is generally required by Oregon state law. Public bidding is advertised in at least one newspaper of general circulation. If the public improvement contract has an estimated cost in excess of $125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation. ODOT also advertises construction contract bid opportunities on its website, and provides a schedule of coming contracts up for bid. Private bid services also provide information on ODOT contracts that are available to bid.

It does not appear difficult to learn of ODOT contract opportunities if potential bidders are familiar with ODOT's process for communicating those opportunities. However, when surveyed, MBE/WBEs were more likely than majority-owned firms to report difficulties learning about ODOT bid opportunities (and local agency bid opportunities).

Bid process. Firms seeking to bid on ODOT construction prime contracts follow the process below:

- It must be prequalified for ODOT work and for a project of the appropriate size;
- The firm must request project and bidding materials from ODOT; and
- The firm must submit a bid, either physically or through ODOT's electronic bidding system.

Prequalification requirement for construction prime contractors. Any firm wishing to bid as a prime contractor on an ODOT construction project must first be prequalified. To become prequalified, a firm must submit a prequalification application, which is assessed by ODOT Highway/Bridge Construction Contracts Procurement Specialists.

The prequalification application requires:

- General information about the firm;
- Articles of incorporation (if applicable);
- Licenses and registrations;
- Three references for each work class;
- A statement of experience containing details of completed projects;
- Other information about the company; and
- A filing fee of $100.

ODOT no longer requires contractors to provide financial records with the prequalification applications. However, since bonding is required, company financials will be examined by the bonding company.

Applications for prequalification must be submitted at least 10 calendar days prior to the bid opening date of a project a contractor wishes to bid to allow time for their prequalification application to be reviewed and either approved or denied. There is no scoring involved in the contracting prequalification process.

Notice of approval is made within 30 days of application submittal. Once approved, prequalification is valid for one year from the first day of the month following approval of the prequalification application.

Special prequalification for construction prime contractors. When elements of a project involve specialized knowledge or expertise, Contractor Special Prequalification may be required. Unlike the above contractor prequalification process, Contractor Special Prequalification is evaluated and scored on items such as time and technical approach.

Contractor Special Prequalification qualifies only the prime contractor and the team submitted (subcontractors and individuals who were used to meet the Contractor Special Prequalification Requirements). If awarded the contract, the team submitted during the special prequalification is required to perform the work on the proposed project.

Plans and specifications. Potential bidders can download plans and specifications for free through the eBIDS online system.

Electronic bidding. ODOT uses the Bid Express electronic bidding system for receiving construction bids.

Notice of first-tier subcontractors. ODOT requires a First-Tier Subcontractor Disclosure Form within two hours of bid closing for contracts of more than $100,000. ODOT posts completed Disclosure Forms along with preliminary bid results and DBE form submittals on its website.

Analysis of bids on ODOT construction contracts. Keen Independent analyzed bid information for a random sample of 100 ODOT construction contracts from October 2010 through September 2014 (see Appendix C for a description of this methodology). In total, 616 bids were submitted for these 100 contracts. MBE/WBEs submitted 48 of the 616 bids:

- A total of 35 bids on these prime contracts (5.7% of all bids) came from minority-owned firms (seven unique firms); and
- 13 bids (2% of all bids) came from WBEs (eight different firms).

The proportion of bids from MBEs was lower than what might be expected given the relative number of firms available for ODOT prime construction contracts in the availability analysis that were MBEs (8.4%). The relative number of bids from WBEs was very low compared to the proportion of available firms that were WBEs (14.8%).[2]

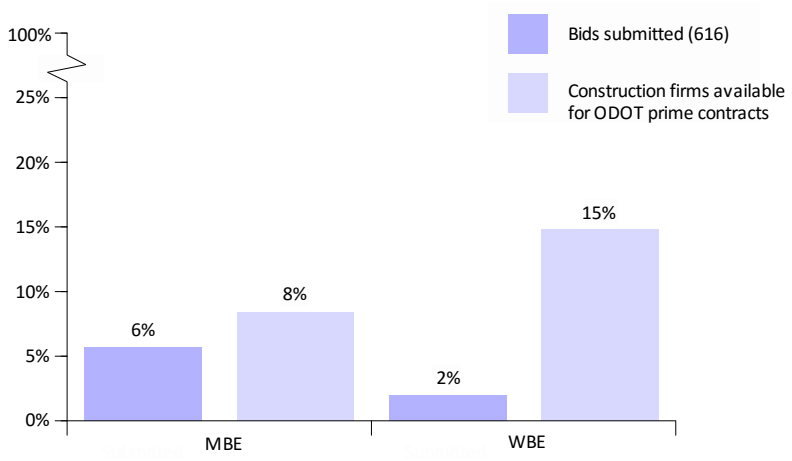
[2] Note that this is based on a count of firms identified in the availability analysis that were available for ODOT construction prime contracts; it is not dollar-weighted.

Figure 8-8 presents MBE and WBE share of bids submitted (darker bars) and the proportion of firms available for ODOT prime contracts that are MBEs and WBEs (lighter bars).

Figure 8-8.
MBE/WBE bids as a share of total bids submitted on ODOT construction contracts

Note: Based on analysis of 616 bids on 100 contracts randomly sampled with the October 2010 - September 2014 study period.

Source: Keen Independent Research from ODOT contract records.



Keen Independent examined whether the bids submitted by MBEs and WBEs on ODOT construction contracts were equally likely to be a winning bid as a bid from a majority-owned firm. To do so, Keen Independent calculated an "expected value" of MBE and WBE contract awards if bids submitted by MBE/WBEs were equally as likely as bids from majority-owned firms to be successful. (In other words, an MBE submitting one bid out of 10 on a contract had odds of 10 percent to win that contract.)

Based on this analysis:

- The four contracts that MBEs won out of the 100 exactly matched the number of awards that would be expected given the number of bids from MBEs on individual contracts. (Although MBEs submitted 6 percent of the total bids, those bids tended to be on contracts that generated a larger number of bids, reducing the odds of winning a contract.)

- WBEs won three contracts, which was more than what might be expected (2 awards) based on the number of bids WBEs submitted on those contracts.

The analysis does not indicate that MBE or WBE bids were treated differently by ODOT or that they were less likely than bids from majority-owned firms to result in contract awards.

G. Analysis of Potential Barriers to MBE/WBE/DBE Participation in ODOT Engineering-related Prime Contracts

Keen Independent also explored participation of minority- and women-owned firms as prime consultants in the 862 engineering-related contracts or task orders during the study period.

Utilization of MBE/WBEs and DBEs as prime consultants on ODOT engineering-related contracts. Minority- and women-owned firms were awarded 134 of the engineering-related prime contracts or price agreements during the study period, or about 16 percent of the total number of contracts.[3] MBE/WBEs comprised about 24 percent of firms available for ODOT engineering-related work as prime consultants.

About $8 million in prime contract dollars (after deducting subcontracts) went to MBE/WBEs, which was 4.3 percent of total prime contract dollars for engineering-related contracts. The availability analysis for engineering-related prime contracts indicated that MBE/WBEs might be expected to receive 17.6 percent of those contract dollars. The disparity index was 25.

DBEs were awarded 88 engineering-related contracts (10% of the total) for 0.9 percent of the work. Figure 8-10 presents the utilization of MBE/WBEs and DBEs as prime consultants on engineering-related contracts.

Utilization of MBE/WBEs and DBEs as prime consultants on large and small engineering-related contracts. Keen Independent examined number and dollars of engineering-related prime contracts and task orders going to MBE/WBEs and DBEs for large contracts ($150,000 or more) and small contracts (less than $150,000).

Large contracts. Keen Independent identified 283 large engineering-related contracts and task orders; MBE/WBEs won 10 of them (4% of the total). MBE/WBEs accounted for 2.9 percent of prime contractor dollars. The disparity index for MBE/WBEs was 17 for large engineering-related prime contracts, a substantial disparity. (A Native American-owned engineering firm accounted for nearly all of this utilization.)

DBEs obtained 0.1 percent of the prime contract dollars for engineering-related contracts.

Small contracts. MBE/WBEs received 124 small engineering-related contracts and task orders, almost one-quarter of the 579 ODOT engineering-related prime contracts and task orders of less than $150,000. MBE/WBE received 11.3 percent of prime contract dollars. ODOT has a Small Contracting Program for architecture, engineering, land surveying and related services contracts under $150,000.

The 11.3 percent MBE/WBE utilization as prime consultants was less than the 21 percent availability for those small contracts (disparity index of 55).

DBEs were awarded 87 of those small engineering-related prime contracts and task orders.

[3] Only awards with some payments associated with them were examined in this utilization analysis.

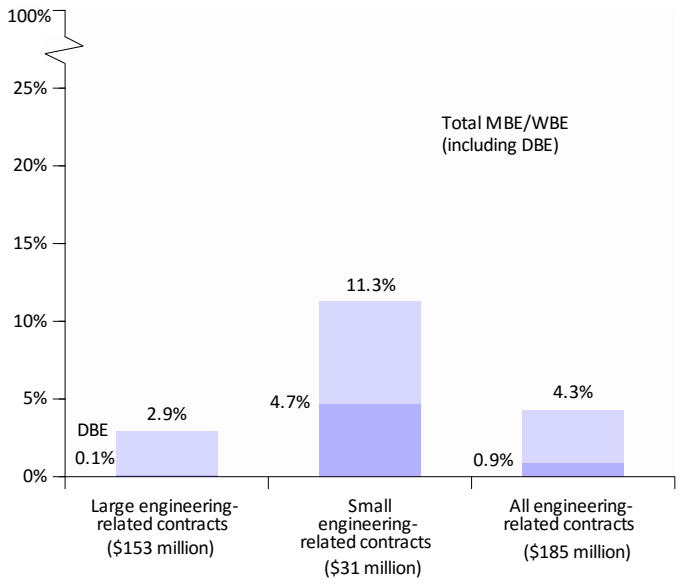
Figure 8-9.
MBE/WBE and DBE participation as prime consultants in engineering-related contracts, October 2010–September 2014

Note:

Number of prime contracts analyzed is 283 for large contracts and 579 for small contracts. Number of prime contracts analyzed for all contracts is 862.

Source:

Source: Keen Independent Research from ODOT contract records.



Small Contracting Program for A&E and other services. The study team identified 32 engineering-related contracts in the study period for which the Small Contracting Program applied. Six contracts went to MBE/WBEs for 17.4 percent of the prime contract dollars (five of these firms were DBEs). MBE/WBE utilization was less than availability (20.6%) when the SCP program applied. The disparity index was 84.

Emerging Small Business Program. The volume of ESB Program engineering contracts was not enough to examine as part of the utilization or disparity analysis.

ODOT contract award process for engineering-related contracts. ODOT often uses a two-tiered selection and assignment process to award A&E-related contracts. Firms competing for these types of ODOT A&E-related contracts must first be awarded a price agreement. To be selected for a price agreement, firms must respond to a request for proposal (RFP) issued by ODOT for A&E type services. ODOT uses the same advertising process for consultant selection as it does for contractor selection. Prequalification is not required to propose on ODOT A&E type service price agreements.

Advertisement of invitations to bid. Public bidding of ODOT A&E-related service price agreements is generally required by Oregon state law. Public bidding is advertised in at least one newspaper of general circulation. ODOT uses the Oregon Procurement Information Network (ORPIN) to distribute notices of A&E opportunities to companies that have signed up with ORPIN to receive notices for that type of work.

It does not appear difficult to learn of ODOT A&E-related opportunities if potential bidders are familiar with ODOT's process for communicating those opportunities. However, when surveyed, MBE/WBEs were much more likely than majority-owned firms to report difficulties learning about ODOT bid opportunities (and local agency bid opportunities).

Price Agreement bid and selection process. ODOT typically begins the consultant selection process for a specific engineering-related price agreement by requesting that consultants submit proposals in response to an RFP for a specific type of A&E-related service.

Submitted proposals are evaluated by a panel within ODOT consisting of at least three people. Each member of the panel conducts an independent evaluation of each firm and gives each proposal a score based upon their evaluation. Evaluation criteria and total number of points available vary depending on the type of work, but the ODOT panel typically evaluates consultants based on the following criteria:

- Project approach and management. One of the evaluation factors is how successfully, clearly and precisely the consultant expressed an understanding of the nature and scope of work and the major tasks and issues, as well as how well they identified any problems they are likely to encounter.

- Project team and qualifications. Evaluators consider the experience and qualifications of the proposed consultant team in light of the scope of the project, work classes involved and ODOT policies.

- Firm capability. ODOT reviews the ability of the firm to do the work, including specialized qualifications and the capacity of the consultant team to accomplish the work given current staff workloads.

Depending on the project, ODOT may deem it necessary to interview the selected firm. In this case, ODOT may choose to interview all proposers, or only the highest-ranked proposer.

Proposers are required to provide references as part of the evaluation criteria. For some ODOT projects, the selected firm's references may be asked questions regarding responsiveness, ability to meet schedule, ability to meet budget, adequate resource allocation and overall experience with the proposer.

When all proposals have been independently scored by all panel members, the panel meets to discuss the scoring. It is not necessary that members concur on any given point. Scores cannot be changed unless an Evaluation Committee member failed to consider critical information in a proposal. Scores are then compiled and firms are ranked based on the highest to lowest average score. One or multiple firms may be selected to earn a Price Agreement for the related A&E type services.

Procedures are in place if consultants wish to protest an award. All firms that submitted a proposal are entitled to review the scores and proposals of the firm(s) selected for the contract.

Being selected for an ODOT price agreement for engineering-related contracts does not always mean that a firm will receive ODOT work. Once they are selected to receive a price agreement for specific area classes, firms must learn of and earn a Work Order Contract (WOC) in one of two ways:

- Mini RFP; or
- Direct appointment/contract.

Mini RFPs. An ODOT Project Manager can choose to select a consultant through a mini RFP process for A&E services needed for outsourced ODOT design projects. Mini RFPs are emailed to firms with applicable Price Agreements. Very similar to the price agreement RFP process, submitted proposals are evaluated by a panel within ODOT consisting of at least three people, including the project manager. Each member of the panel conducts an independent evaluation of each firm and gives each proposal a score based upon their evaluation. Evaluation criteria and total number of points available change from project to project, but the ODOT panel typically evaluates consultants based on criteria similar to that of the original price agreement RFP.

When all proposals have been independently scored by all panel members, the panel meets to discuss the scoring. It is not necessary that members concur on any given point. Scores cannot be changed unless an Evaluation Committee member failed to consider critical information in a proposal. Scores are then compiled and firms are ranked based on the highest to lowest average score. Once the highest-ranking responsive, responsible proposal has been determined, a notice of intent to award the contract is announced, and a notice of standing is provided to all proposers.

After the consultant is selected, the Project Manager negotiates the Statement of Work (SOW), schedule and costs with assistance from the regional technical staff and the ODOT Procurement Office (OPO).

Direct appointments. Direct appointments for WOC assignments are a second option for the selection of firms to provide A&E services. Direct appointments are only permitted for specific assignments that meet applicable statutes and rules including:

- WOCs that do not exceed $100,000;
- Continuation of a project; or
- Projects that have been delayed or delayed and materially altered.

When firms are selected for direct appointments, the ODOT project manager negotiates the Statement of Work (SOW), schedule and costs with assistance from the regional technical staff and the ODOT Procurement Office (OPO).

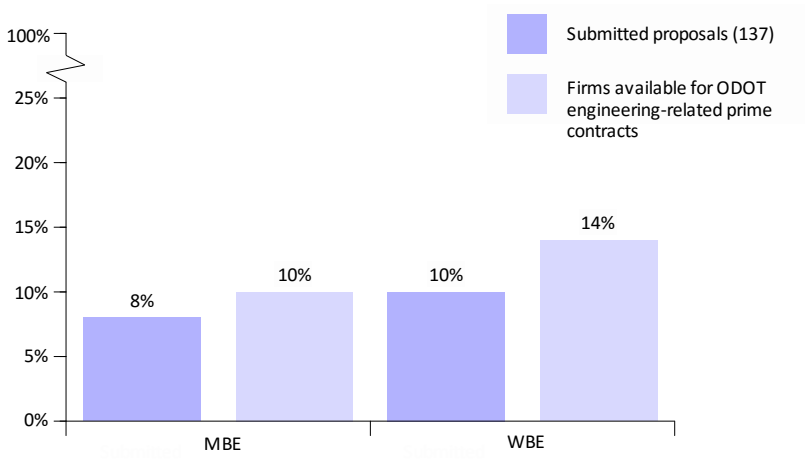
Analysis of proposals on ODOT engineering contracts. Keen Independent analyzed the relative number of bids submitted by MBEs and WBEs for a random sample of 50 engineering-related contracts during the study period. Of the 137 bids submitted, 11 (8%) were submitted by MBEs and 14 (10%) were submitted by WBEs.

Based on the availability analysis, 10 percent of companies available for ODOT engineering contracts were MBEs and 14 percent were WBEs. The relative number of proposals from MBEs and WBEs was somewhat lower than what might be expected from their relative availability for this work (8% compared with 10%, and 10% compared with 14%). Figure 8-10 displays these results.

Figure 8-10.
MBE/WBE proposals as a share of total proposals submitted on a sample of ODOT engineering-related contracts

Note: Based on analysis of 137 bids on 50 contracts randomly sampled within the October 2010 - September 2014 study period.

Source: Keen Independent Research from ODOT contract records.



Keen Independent examined whether the proposals submitted by MBEs and WBEs on ODOT engineering-related contracts were equally likely to be a winning proposal as one from a majority-owned firm. As with construction bids discussed previously in this chapter, Keen Independent calculated an "expected value" of MBE and WBE contract awards given the number of proposals submitted for each contract. (In other words, an MBE submitting one proposal out of 10 on a contract had odds of 10 percent to win that contract.) Based on this analysis:

- The three contracts that MBEs won exactly matched the number of awards that would be expected given the number of bids from MBEs on individual contracts. (Although MBEs submitted 8 percent of the total proposals, those proposals tended to be on contracts that generated a large number of proposals, reducing the odds of winning a contract.)

- WBEs won four contracts, which was what might be expected given the number of bids WBEs submitted on those contracts.

The analysis of contract awards from these 50 engineering-related contracts indicates that proposals from MBE or WBEs were as likely to result in contract awards as proposals submitted from majority-owned firms.

H. ODOT Operation of the Federal DBE Program, including Overconcentration Analysis

This part of Chapter 8 examines:

- ODOT's operation of the DBE contract goals program;
- Any overconcentration of DBEs;
- Participation of individual DBEs in ODOT contracts; and
- DBE participation as prime contractors.

DBE contract goals program. The Federal DBE Program provides for recipients of FHWA funds to set an overall goal for DBE participation and use DBE contract goals to meet any portion of their overall goal they do not project being able to meet using race-neutral means.[4] However, federal regulations direct those operating the program to reduce or eliminate the use of contract goals to ensure that they do not result in exceeding the overall goal.[5]

Because of the *Western States Paving* court decision in 2005 and subsequent guidance from USDOT, ODOT did not set DBE contract goals from January 2006 through fall 2008 (see Chapter 2 for further explanation). Since that time, ODOT has set DBE contract goals for some of its FHWA-funded construction and engineering-related contracts. Only certain DBE groups have been eligible to meet those contract goals.

ODOT sets DBE contract goals on a contract-by-contract basis. Bidders or proposers comply with a DBE contract goal by making good faith efforts to meet it. A bidder or proposer can demonstrate this in one of two ways:

- By showing it has obtained enough DBE participation to meet the contract goal; or
- Documenting that it made adequate good faith efforts to meet the goal, even though it did not succeed in doing so.[6]

ODOT has a process for considering good faith efforts submissions from any bidder or proposer that is unable to meet the DBE contract goal. In recent years, bidders on construction contracts almost always met the DBE contract goal; they rarely attempted to comply by showing good faith efforts to meet a goal that they were unable to meet.

Utilization of DBEs with and without DBE contract goals. Keen Independent identified $77 million in contract dollars going to DBEs on the 372 FHWA-funded contracts for which DBE contract goals were applied. This was comprised of 369 subcontracts to DBEs totaling $68 million and three prime contracts to DBEs for $9 million. There was a total of $774 million in FHWA-funded contracts for which DBE contract goals applied.

- Overall participation of DBEs was 10.0 percent on contracts with DBE contract goals, as shown in the bottom portion of Figure 8-11. DBE participation on contracts without goals was 5.1 percent.
- DBE participation on contracts with goals was mostly distributed across African American- and white women-owned firms, as shown in Figure 8-11.
- There was very little participation of DBEs owned by African Americans, Asian-Pacific Americans, Subcontinent Asian Americans and Native Americans on ODOT contracts without DBE contract goals.

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[4] 49 CFR Section 26.51(d).

[5] 49 CFR Section 26.51(f)(2). And, if an agency exceeds its overall goal in two consecutive years through the use of contract goals, it must reduce its use of contract goals proportionately in the following year (see 49 CFR Section 26.51(f)(4)).

[6] 49 CFR Section 26.53(a).

Figure 8-11.
MBE/WBE and DBE utilization for ODOT contracts with and without DBE contract goals, October 2010–September 2014

	FWHA-funded contracts with DBE goals			FHWA- and state-funded contracts w/o DBE goals		
	Number of prime and subcontracts	$1,000s	Percent of dollars	Number of prime and subcontracts	$1,000s	Percent of dollars
MBE/WBEs						
African American-owned	134	$ 31,098	4.0 %	31	$ 920	0.1 %
Asian-Pacific American-owned	57	8,750	1.1	47	2,644	0.2
Subcontinent Asian American-owned	29	9,447	1.2	76	1,874	0.2
Hispanic American-owned	47	12,064	1.6	111	33,673	2.9
Native American-owned	56	11,997	1.6	129	13,579	1.2
WBE (white women-owned)	321	45,141	5.8	976	53,347	4.6
Total MBE/WBE	**644**	**$ 118,497**	**15.3 %**	**1,370**	**$ 106,039**	**9.2 %**
Majority-owned	1,336	655,303	84.7	4,677	1,046,438	90.8
Total	**1,980**	**$ 773,800**	**100.0 %**	**6,047**	**$ 1,152,477**	**100.0 %**
DBEs						
African American-owned	67	$ 20,535	2.7 %	18	$ 623	0.1 %
Asian-Pacific American-owned	34	2,622	0.3	30	1,074	0.1
Subcontinent Asian American-owned	29	9,447	1.2	72	1,425	0.1
Hispanic American-owned	34	10,444	1.3	73	20,362	1.8
Native American-owned	20	8,252	1.1	62	3,577	0.3
WBE (white women-owned)	188	25,902	3.3	635	31,719	2.8
White male-owned DBE	0	0	0.0	1	39	0.0
Total DBE	**372**	**$ 77,203**	**10.0 %**	**891**	**$ 58,820**	**5.1 %**
Non-DBE	1,608	696,597	90.0	5,156	1,093,657	94.9
Total	**1,980**	**$ 773,800**	**100.0 %**	**6,047**	**$ 1,152,477**	**100.0 %**

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

Source: Keen Independent from data on ODOT and LPA Program contracts October 2010–September 2014.

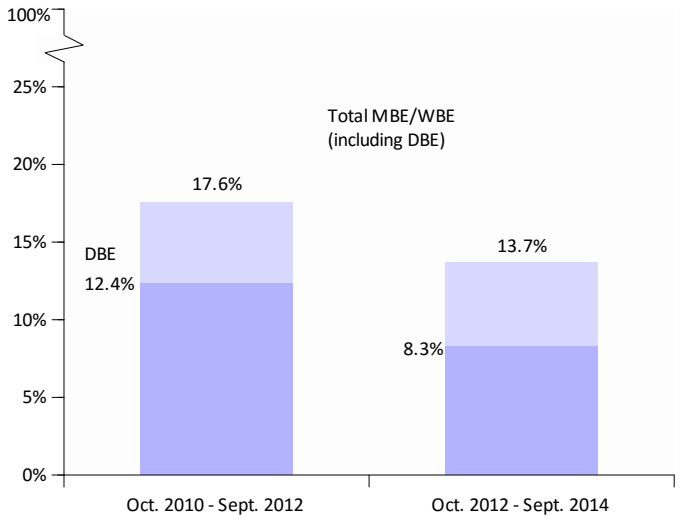
DBEs received 17 percent of the subcontract dollars on contracts with DBE contract goals (not shown). By comparison, DBEs received 9 percent of the subcontract dollars on FHWA- and state-funded contracts without DBE contract goals. Total MBE/WBE participation was 26.2 percent of subcontract dollars when DBE goals were applied (disparity index of 110) and 16.4 percent without goals (disparity index of 66).

Figure 8-12 examines trends over time in MBE/WBE and DBE utilization on contracts that had DBE contract goals. In the last two years of the study period, DBE participation on contracts with goals was lower than the first two years of the study period. Subcontinent Asian American-owned DBEs were the only group for which participation increased over these two time periods.

Figure 8-12.
MBE/WBE and DBE share of total contract dollars on contracts with DBE goals FFY 2011–FFY 2012 and FFY 2013–FFY 2014

Note: Number of prime contracts/subcontracts analyzed is 945 for FFY 2011-FFY 2012, and 1,035 for FFY 2013-FFY 2014.

Source: Keen Independent Research from ODOT contract records.



On contracts without DBE goals (not shown), MBE/WBE and DBE participation decreased between the two time periods as well.

Effect of DBE contract goals for construction and engineering-related contracts. DBE contract goals had a positive effect on MBE/WBE and DBE participation for both construction and engineering-related contracts, as shown in Figure 8-13.

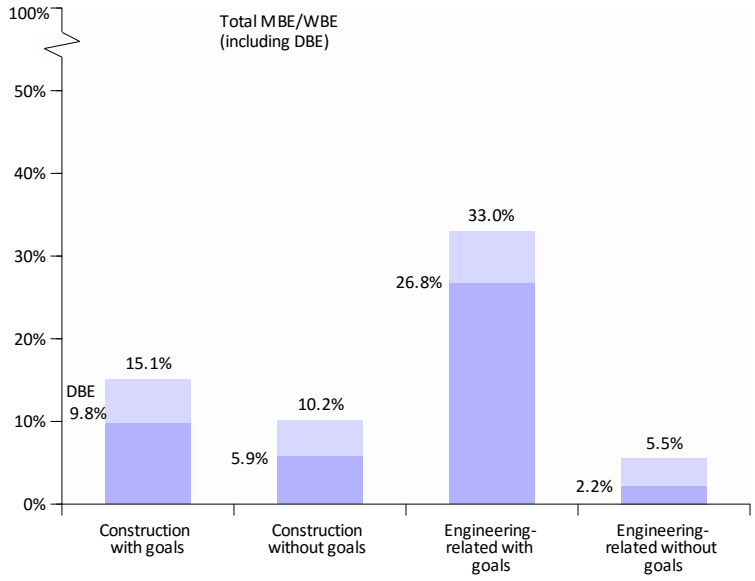
- DBE participation was about twice as high on construction contracts with DBE contract goals (9.8%) as construction contracts without goals (5.9%). MBE/WBE participation was also higher (15.1%). The disparity index for MBE/WBEs on construction contracts was 85 on contracts with DBE goals and 50 on contracts without goals.

- For engineering-related contracts, DBE participation was 26.8 percent on contracts with goals and only 2.2 percent for contracts without goals. MBE/WBE utilization was also higher on contracts with goals (33.0%). The disparity index for MBE/WBEs on these contracts was 148 with contract goals and 29 without contract goals.

Figure 8-13.
MBE/WBE and DBE share of total contract dollars on construction and on engineering-related contracts with and without contract goals

Note: Number of prime contracts/subcontracts analyzed is 1,798 for construction with goals, 4,079 for construction without goals, 182 for engineering-related with goals and 1,968 for engineering-related without goals.

Source: Keen Independent Research from ODOT contract records.



Analysis of any overconcentration of DBEs. The Federal DBE Program requires agencies implementing the program to take certain steps if they determine that "DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work" (see 49 CFR Section 26.33(a)).

Keen Independent examined the representation of DBEs and work going to DBEs in three ways:

- Share of ODOT contract dollars within a type of work going to DBEs;

- Distribution of DBE dollars by work type; and

- Representation of DBEs among all firms available for specific types of contracts and subcontracts.

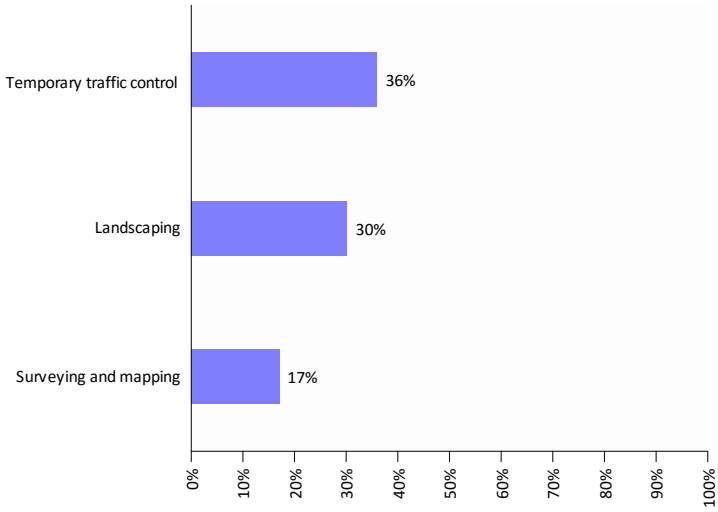
Share of ODOT contract dollars within a type of work going to DBEs. For each specific type of work examined in the study, the study team calculated the share of dollars going to DBE firms. Figure 8-14 shows that DBEs accounted for 30 percent or more of the total work in two types of work: traffic control and landscaping.

Not shown in Figure 8-14 is DBE share of petroleum supply dollars and trucking dollars. ODOT does not have equivalent information for non-DBEs for these two disciplines, as they are not usually procured through subcontracted agreements.

Figure 8-14.
DBE share of total contract dollars on FHWA- and state-funded contracts, October 2010–September 2014

Note: Number of prime contracts/subcontracts analyzed is 8,027.

Source: Keen Independent Research from ODOT contract records.



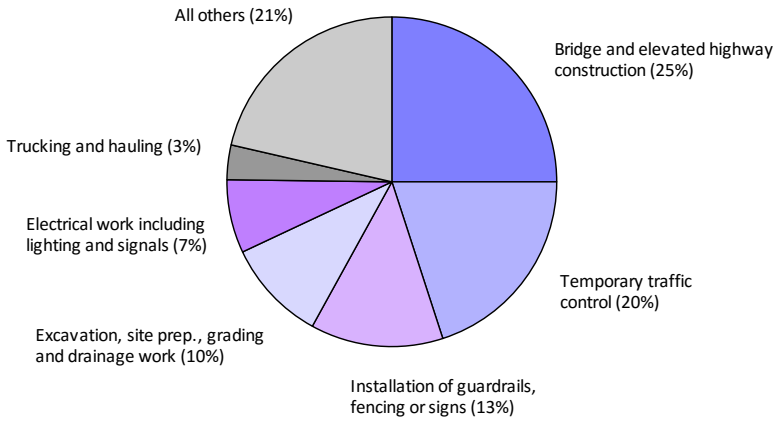
Distribution of DBE contract dollars across types of work. Another way to examine potential overconcentration of DBEs is whether DBE participation is only found in certain types of work. That might be another indicator that DBE contract goals overly burden non-DBEs in those subindustries.

In the study period, work classified as bridge and elevated highway construction accounted for 25 percent of DBE participation, temporary traffic control was 20 percent of DBE dollars, installation of guardrails, fencing or signs made up 13 percent and excavation, site prep., grading and drainage work made up 10 percent. Thirteen other types of work individually represented between 1 and 10 percent of DBE dollars. These results indicate broad participation of DBEs across types of work. This minimizes the possibility that any particular type of non-DBE is unduly burdened by the DBE contract goals program. Figure 8-15 presents these results.

Figure 8-15.
DBE share of total contract dollars on FHWA- and state-funded contracts, October 2010–September 2014

Note: Number of prime contracts/subcontracts analyzed is 8,027.

Source: Keen Independent Research from ODOT contract records.



Representation of DBEs among firms available for particular types of contracts or subcontracts. Finally, Keen Independent analyzed whether DBEs accounted for a dominant share of firms available for particular types of work.

Keen Independent first examined DBEs and non-DBEs in the availability data based on the subindustry they indicated as their primary line of work. There was no worktype where DBEs accounted for a dominant share of firms available for that type of work. DBEs represented the highest share of companies in temporary traffic control (of the firms for which this was their primary line of work, 29 percent were DBEs).

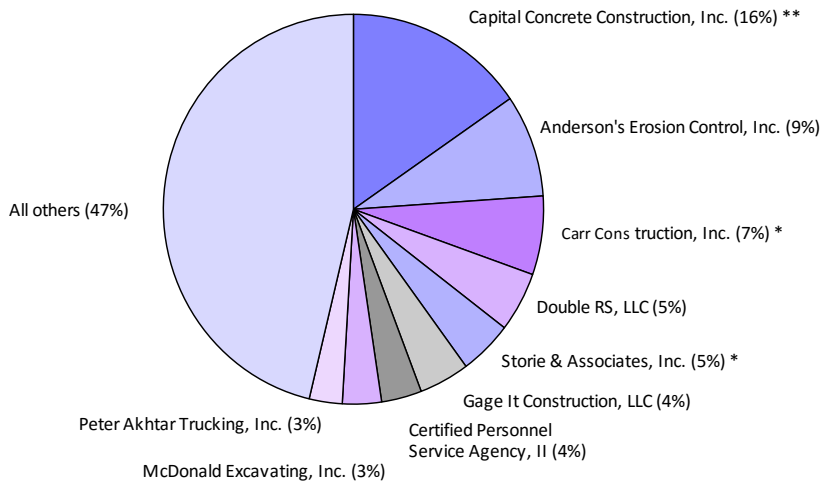
The study team also performed this analysis based on all the types of highway-related work that companies indicated they perform. Examining the data in that way, DBEs represented a smaller share of firms performing traffic control and other types of work.

Participation of individual DBEs in ODOT FHWA-funded contracts. Nine DBEs accounted for about one-half of the total FHWA-funded contract dollars going to DBEs during the study period. Two of these eight firms were no longer DBE-certified at the time of this study. Capital Concrete Construction, which received the most ODOT contract dollars during the study period, appears to no longer be in business.

Figure 8-16.
DBEs accounting for the most dollars of FHWA-funded contracts, October 2010–September 2014

Note: Number of prime contracts/subcontracts analyzed is 6,248.

Source: Keen Independent Research from ODOT contract records.



*No longer DBE certified starting in 2014
**Disconnected phone and surrendered contractor's license at time of the study

DBE participation as prime contractors. DBEs were awarded 24 of the 991 FHWA-funded prime contracts from October 2010 through September 2014. About 2.9 percent of prime contract dollars went to DBEs.

I. Summary from Further Exploration of MBE/WBE and DBE Utilization

The analyses presented in Chapter 8 provide insights into the overall disparities in the utilization of MBE/WBEs discussed in Chapter 7, and about programs to address those disparities, including ODOT's use of the DBE contract goals program and the impact of the Small Contracting Program.

Overall pattern of disparities for MBE/WBEs. There was a broad pattern of disparities for MBE/WBEs across different subsets of ODOT contracts. For example, disparities were found for both subcontracts (without DBE contract goals) and prime contracts, and for both construction and engineering-related contracts.

MBE/WBE utilization and DBE participation varied considerably by ODOT region within the state. The percentage of Region 1 contract dollars going to MBE/WBEs, which includes the Portland Metropolitan Area, was more than double the share of dollars going to MBE/WBEs in the central and eastern portions of the state. Even so, there was a pattern of disparities in the utilization of MBE/WBEs across regions.

Impact of DBE contract goals. Use of DBE contract goals increased the participation of both DBEs and MBE/WBEs overall. On contracts without DBE contract goals, DBE participation was 5.1 percent (50% on FHWA-funded contracts). DBE participation on contracts with goals was 5 percentage points higher (10.0%). MBE/WBE participation increased by about the same amount when contract goals applied.

However, disparity analysis for contracts with DBE goals indicated that it did not fully eliminate the disparity for MBE/WBEs (disparity index of 86), perhaps because participation in the DBE contract goals program for construction contracts was limited to two DBE groups. (The disparity index for MBE/WBEs for contracts without DBE contract goals was 46.)

DBE contract goals, when used, appeared to be most effective in addressing disparities for engineering-related contracts. More DBE groups were eligible to meet the goal, and the disparity index for these contracts for MBE/WBEs was 148 when DBE contract goals were used. Because ODOT only started setting DBE contract goals for engineering-related contracts in April 2013, relatively few of the engineering-related contracts during the study period had DBE contract goals. DBE participation was 2.9% for engineering-related contracts for the study period, but 26.8 percent on contracts with DBE goals.

Any barriers to MBE/WBE participation as prime contractors. MBE/WBEs received 5.6 percent of prime contract dollars. Of that total, DBEs obtained 3.2 percentage points (2.9% for FHWA-funded contracts).

Case studies of ODOT contracts found some underrepresentation of bids and proposals from MBEs and larger underrepresentation for WBEs. There appear to be factors in the ODOT contracting process, including bonding and perhaps prequalification requirements for construction prime contractors, and evaluation factors for engineering-related contracts, that might work against the success of smaller, newer businesses as prime contractors. However, once a bid or proposal was submitted to ODOT, there was no difference in the likelihood of one from an MBE/WBE being successful compared with those submitted by majority-owned firms.

Because there may be factors in the marketplace that put MBE/WBEs at a disadvantage competing for ODOT prime contracts given the contracting processes in place, the number of bids and proposals ODOT receives from those businesses may be somewhat depressed. Even though ODOT employs processes typical of public agencies, some of which are required by state law, those processes might negatively affect opportunities for MBE/WBEs.

Small Contracting Program. The Small Contracting Program also appears to be an effective means to increase MBE/WBE participation in construction-related contracts. There were too few engineering-related contracts under the Small Contracting Program to assess its effectiveness for these contracts.

Emerging Small Business Program. The ESB program also appears to be an effective means to increase MBE/WBE participation in construction-related contracts.

Any undue burdens on non-DBEs as part of implementation of the Federal DBE Program. There was no other indication of overconcentration of DBE participation based on the analyses performed.