

## **EXECUTIVE SUMMARY.**

### **ODOT 2016 Disparity Study**

The Oregon Department of Transportation (ODOT) is required to implement the Federal Disadvantaged Business Enterprise (DBE) Program as a condition of receiving funding from the U.S. Department of Transportation (USDOT). ODOT's operation of the Federal DBE Program is guided by federal regulations and instructions from USDOT.

ODOT has periodically conducted disparity studies since 2007 to analyze whether there is a level playing field for minority- and women-owned firms in the Oregon transportation contracting industry. The information collected through these studies helps ODOT operate the Federal DBE Program in compliance with Title 49 Code of Federal Regulations (CFR) Part 26, USDOT guidance and Ninth Circuit case law. ODOT's last disparity study was completed in 2011.

In late 2014 ODOT engaged a team led by Keen Independent Research LLC (Keen Independent) to prepare the 2016 Disparity Study, which examines the relative availability and participation of minority- and women-owned firms in ODOT's contracts from October 2010 through September 2014. The disparity study also analyzes conditions for minorities, women, and minority- and women-owned firms within the Oregon marketplace. Finally, the study identifies recommendations and specific steps that may be taken to encourage utilization of all small businesses in ODOT contracting as well as programs specific to DBEs.

Information from the 2016 Disparity Study will assist ODOT with the following:

- Setting an overall annual goal for DBE participation in its contracts funded by the Federal Highway Administration (FHWA) for federal fiscal years 2017 through 2019;
- Evaluating whether it can attain its overall DBE goal solely through neutral measures, or whether race- or gender-conscious measures are also needed; and
- Determining the specific race, ethnic and gender groups that may be eligible for any race- or gender-conscious program elements, such as DBE contract goals.

This Executive Summary includes:

- A. Background;
- B. Disparity Study research activities;
- C. Availability results and base figure for the overall DBE goal;
- D. Potential adjustments to calculate ODOT's overall DBE goal;
- E. Information to project the portion of the overall goal to be met through neutral means;
- F. Quantitative and qualitative information for the Oregon marketplace;
- G. Disparity analysis for ODOT contracts;
- H. Recommendations; and
- I. Next steps in the Disparity Study process.

## A. Background

For federal fiscal years (FFYs) 2015 and 2016, ODOT's overall goal for DBE participation on its FHWA-funded contracts is 13.1 percent. The agency is attempting to meet that goal through a combination of neutral and race- and gender-conscious measures.

ODOT must implement the Federal DBE Program in light of the pivotal 2005 Ninth Circuit Court of Appeals decision in *Western States Paving Co. v. Washington State DOT*. The Court upheld the constitutionality of the Federal DBE Program, but found that Washington State DOT failed to show its implementation of the Federal DBE Program was narrowly tailored.

In response to the *Western States Paving* decision and per USDOT guidance, state and local agencies affected by the decision, including ODOT, suspended use of race- and gender-conscious program elements such as setting goals for DBE participation on federally-funded contracts. USDOT recommended that agencies conduct disparity studies to determine how they might narrowly tailor the Federal DBE Program to their local industries. ODOT completed a disparity study in 2007 and, based on the results, began setting DBE contract goals again in FFY 2008 for its construction contracts. However, as a result of the study findings, only a subset of DBE groups was eligible to meet contract goals. ODOT completed an update report in 2011 and, based on the results, continued setting DBE goals on construction contracts and reinstated setting goals on architectural and engineering and related services contracts. Again, only a subset of DBE groups was eligible to meet contract goals.

A 2013 Ninth Circuit decision regarding operation of the Federal DBE Program by the California Department of Transportation (Caltrans) provides further direction on agency implementation of the program. Leaders of the Keen Independent team directed the 2007 Caltrans disparity study and helped to defend Caltrans when a contractors association challenged its operation of the Federal DBE Program. The Ninth Circuit favorably reviewed the methodology and information provided in the disparity study and determined that the information supported Caltrans' operation of the Federal DBE Program. Keen Independent applied a methodology in the 2016 Disparity Study for ODOT that is very similar to what the Court favorably reviewed in the Caltrans case.

## B. Disparity Study Research Activities

Keen Independent began the Disparity Study in November 2014. The study team includes Holland & Knight, a law firm; local subconsultants JLA Public Involvement, Benetti Partners, Donaldson Enterprises, Merina & Company and Customer Research International, a survey firm.

- **Stakeholder engagement and other public input.** Throughout the study, the study team consulted with an External Stakeholder Group that included representatives from DBE-certified firms, other businesses, industry associations, other public agencies and FHWA. The team set up a study website, dedicated email address, and a telephone hotline, and both ODOT and the study team conducted extensive communications with the public from the beginning of the study. This included requests for public input and public meetings held at the start of the study in 2015 and in upon release of a draft report to the public in spring 2016. Also, ODOT and the External Stakeholder Group reviewed the race, ethnicity, and gender contractor data together before Keen Independent completed the disparity analysis.

- **Data collection and review.** The study team collected information about FHWA- and state-funded contracts awarded by ODOT or by local agencies from October 2010 through September 2014. The contract data included 8,027 prime contracts and subcontracts totaling \$1.9 billion.
- **Utilization analysis.** Keen Independent identified the race, ethnicity and gender ownership of companies receiving ODOT prime contracts or subcontracts through a combination of sources, including telephone interviews with those firms. The team then calculated the value of the contracts and subcontracts awarded to each contractor, or the contractor's "utilization." The utilization analysis then examined the value of contracts awarded to minority-owned firms (by race and ethnicity), white women-owned firms and majority-owned firms (firms that are not minority- or women-owned).
- **Relevant market area determination.** Because 88 percent of ODOT contract dollars during the study period went to firms located in Oregon or the two Washington counties within the Portland Metropolitan Area, the study team defined Oregon and Southwest Washington as the study area. Keen Independent examined quantitative and qualitative information about the statewide transportation contracting industry gathered through survey research, secondary data and in-depth interviews with representatives of 71 companies, trade associations and other public agencies throughout the state.
- **Benchmark availability determination.** The study team completed telephone surveys with thousands of businesses to determine the benchmark availability of different types of businesses for individual ODOT prime contracts and subcontracts. The availability analysis also examined the size and location of prime contracts and subcontracts when determining a firm's availability for specific ODOT contracts.
- **Contracting disparity analysis.** The study team then compared the percentage of contract dollars going to minority-, white women, and majority-owned firms to the benchmark availability for each group.
- **Overall DBE goal calculations.** Finally, Keen Independent prepared analyses that would help ODOT set an overall goal for DBE participation on FHWA-funded contracts, project the portion to be met through neutral means, and determine which groups of DBEs might be eligible for any race- and gender-conscious programs such as DBE contract goals.

The full Disparity Study report is more than 700 pages in length and provides a complete discussion of methodology and study information. The following briefly summarizes results.

### C. Availability Results and Base Figure for ODOT Overall DBE Goal

Keen Independent compiled information about the availability of minority- and white women-owned firms (MBEs and WBEs, regardless of certification status) and majority-owned firms (firms with less than 51 percent minority or women ownership) for work in ODOT transportation contracts. The study team used this information to establish availability benchmarks for MBE and WBE utilization that could be compared with actual MBE and WBE utilization observed for ODOT contracts.

The study team also used availability analyses as inputs to the overall DBE goal for FHWA-funded contracts. Keen Independent calculated the overall goal based on firms currently certified as DBEs (“current DBEs”) and those minority- and women-owned firms that potentially could be certified as DBEs (“potential DBEs”). Not all MBE/WBEs are current or potential DBEs, as explained below.

**Database of firms available for ODOT contracts.** Keen Independent created a master availability database that contains detailed information from businesses about the types, sizes and locations of the highway construction and engineering-related work they perform. The study team surveyed firms that had expressed interest in ODOT work or operated in fields related to highway construction and engineering. The study team’s final availability database included 1,639 businesses with qualifications and interest in specific types of ODOT and local agency transportation contracting. Of those 1,639 businesses, 446 (27%) were minority- or women-owned.

Figure ES-1 shows the number of businesses by ownership in the availability database for this study. Because results are a simple headcount of firms with no analysis of availability for specific ODOT contracts, they only reflect the first step in the availability analysis.

Figure ES-1.  
Number of minority-, women- and majority-owned 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 %

**Dollar-weighted availability.** For each of the availability analyses prepared for this study, Keen Independent developed dollar-weighted availability benchmarks:

- The study team identified specific characteristics of each of the 8,027 prime contracts and subcontracts included in the set of contracts being analyzed.

- For each prime contract and subcontract, Keen Independent identified the businesses in the detailed availability database that indicated that they performed the type, size and location of work pertinent to that prime contract or subcontract. After the available firms for a prime contract or subcontract were identified, the study team calculated the percentage of available firms that were minority-owned (by group), white women-owned and majority-owned.
- Once Keen Independent had calculated availability for 8,027 individual prime contracts and subcontracts, the study team developed aggregate availability results across all prime contracts and subcontracts.

The first step to aggregating results was to determine dollar weights for the availability figures for each prime contract and subcontract. Keen Independent calculated weights by dividing the value of that prime contract or subcontract by the total dollars of all the contracts (\$1.9 billion when examining all contracts).

After applying the weights to the results of the availability analysis for each prime contract and subcontract, Keen Independent added the results to calculate overall availability estimates for WBEs and each MBE group for the entire set of contracts.

Including all 8,027 prime contracts and subcontracts, dollar-weighted MBE/WBE availability was 19.24 percent. In other words, if there were a level playing field for firms available for ODOT work, MBE/WBEs might be expected to receive 19.24 percent of ODOT transportation contract dollars. This dollar-weighted availability was lower than the proportion of firms in the availability database that were MBE/WBEs (27%) because minority- and women-owned firms comprised a smaller portion of firms available for large highway construction prime contracts than for specialty trade prime contracts or subcontracts. Figure ES-2 presents dollar-weighted availability results for FHWA-funded, state-funded and all contracts combined.

Figure ES-2.  
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.

**Converting MBE/WBE availability to identify current and potential DBEs for the base figure.**

Figure ES-3 provides the calculations to separately identify current and “potential” DBE availability from the 19.29 percent MBE/WBE availability figure for FHWA-funded contracts shown in Figure ES-2. There were three groups of MBE/WBEs that Keen Independent did not count as current/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 size limits.** The study team did not count MBE/WBEs with average annual revenue that exceeded the revenue limits for DBE certification for their subindustry. This was 18 firms.
- **Ineligible for public contracts.** Also excluded were MBE/WBEs in the availability surveys that are prohibited from work for any portion of the FFY 2017-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. 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.

Assuming ODOT’s mix of future FHWA-funded contracts is expected to be similar to FHWA-funded contracts from October 2010 through September 2014, Keen Independent recommends that ODOT use the 15.84 percent current/potential DBE availability figure as the “base figure” when determining its overall DBE goal for FFY 2017 through FFY 2019.

Figure ES-3.

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.

For purposes of comparison, Keen Independent also performed dollar-weighted availability calculations for currently-certified DBEs. The dollar-weighted availability of current DBEs is 6.00 percent.

#### D. Potential Adjustments to Calculate the Overall DBE Goal

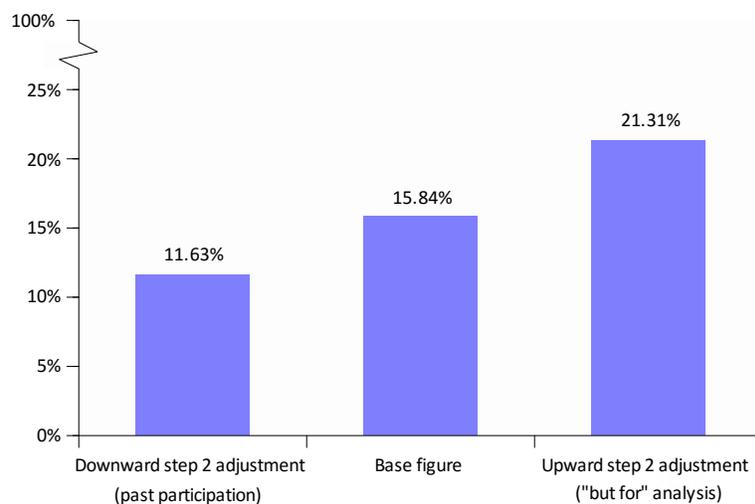
Per the Federal DBE Program, ODOT must consider potential adjustments to the base figure as part of determining its overall annual DBE goal for FHWA-funded contracts. The Federal DBE Program outlines factors that an agency must consider when assessing whether to make any adjustments to its base figure:

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

If ODOT makes a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts might be 11.63 percent. If ODOT decides to not make a downward adjustment and to make an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal might be 21.31 percent. ODOT might also choose to not make a step 2 adjustment, which would mean a DBE goal of 15.84 percent. Figure ES-4 summarizes this information and Chapter 9 further explains these calculations.

Figure ES-4.  
Potential step 2 adjustments to overall DBE goal for FHWA-funded contracts, FFY 2017–FFY 2019

Note:  
For further explanation see Chapter 9.



#### E. Information to Project the Portion of the Overall Goal to be Met through Neutral Means

The Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures.<sup>1</sup> Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small

<sup>1</sup> 49 CFR Section 26.51.

businesses, and are not specifically limited to MBE/WBEs or DBEs. Agencies must determine whether they can meet their overall DBE goals solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, agencies must project the portion of their overall DBE goals that they expect to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

- If an agency determines that it can meet its overall DBE goal solely through race- and gender-neutral means, then it would propose using only neutral measures in its operation of the Federal DBE Program.
- If an agency determines that a combination of race- and gender-neutral and race- and gender-conscious measures are needed to meet its overall DBE goal, then the agency would propose using a combination of neutral and conscious measures when operating the Federal DBE Program.

**Projections of goal attainment through neutral means.** USDOT offers guidance concerning how transportation agencies should make these projections. Using this information, Keen Independent analyzed different approaches ODOT could apply when making its projection for FFY 2017 through FFY 2019.

The most complete and accurate information about past DBE participation in a neutral environment comes from Keen Independent’s utilization analysis for contracts without DBE contract goals. ODOT achieved 5.0 percent DBE participation on ODOT contracts without DBE contract goals based on Keen Independent analysis of these contracts from October 2010 through September 2014.

Using this 5.0 percentage point projection for illustration, Figure ES-5 summarizes this analysis for three different examples of overall DBE goals that ODOT might select. In each column, the neutral projection (row 2) is subtracted from the overall DBE goal (row 1) to derive the race-conscious projection (row 3). The left-most column of results presents ODOT’s overall goal and neutral projection for the current time period (FFY 2015 through FFY 2016).

Figure ES-5.  
Current ODOT overall DBE goal and projections of race-neutral for FHWA-funded contracts for FFY 2014–FFY2016 and examples of overall goal and projections for FFY 2017 through FFY 2019

Component of overall DBE goal	FFY 2015- FFY 2016	FFY 2017- FFY 2019		
		Downward adjustment	Base figure	Upward adjustment
Overall goal	13.10 %	11.63 %	15.84 %	21.31 %
Neutral projection	- 7.90	- 5.00	- 5.00	- 5.00
Race-conscious projection	5.20 %	6.63 %	10.84 %	16.31 %

Source: Keen Independent analysis.

**Determining whether there is evidence of discrimination.** Before making the projection of neutral attainment and determining whether it will use DBE contract goals for any group, or which groups, ODOT must consider whether there is evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups.

In *Western States Paving*, the Ninth Circuit Court of Appeals held the recipient of federal funds must have independent evidence of discrimination within the recipient's own transportation contracting marketplace in order to determine whether or not there is the need for race-, ethnicity-, or gender-conscious remedial action.<sup>2</sup> In *Western States Paving*, and in *AGC, SDC v. Caltrans*, the Ninth Circuit Court found that even where evidence of discrimination is present in a recipient's market, a narrowly tailored program must apply only to those minority groups that suffered discrimination. Thus, under a race- or ethnicity-conscious program, for each of the minority groups to be included in any race- or ethnicity-conscious elements in a recipient's implementation of the Federal DBE Program, there must be evidence that the minority group suffered discrimination within the recipient's marketplace.<sup>3</sup>

ODOT should review the results of this disparity study and other information it has when making this determination. The balance of this Executive Summary briefly outlines key information provided in the full report concerning quantitative and qualitative information for the Oregon marketplace; and results of the disparity analysis for ODOT contracts.

## **F. Quantitative and Qualitative Information for the Oregon Marketplace**

As discussed in Chapter 5 of the report and in supporting appendices, there is quantitative and qualitative information indicating that there is not a level playing field for minorities and women, and minority- and women-owned businesses, in the Oregon transportation contracting industry.

**Summary of quantitative information.** From Keen Independent's analysis of U.S. Bureau of the Census data, survey data and other information, there is quantitative information indicating disparities for certain minority groups and women regarding entry and advancement as employees within the industry, disparities in business ownership, disparities concerning access to capital and bonding, and certain disparities in success of minority- and women-owned firms. Also, relatively more minority- and women-owned firms report difficulties networking with prime contractors or customers based on survey data.

There was evidence of disparities in the Oregon marketplace affecting African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms as well as white women-owned firms. This includes evidence that there are fewer Hispanic American, Native American and female business owners in the Oregon construction industry than what might be expected given a level playing field.

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<sup>2</sup> *Western States Paving*, 407 F.3d at 997-98, 1002-03; see *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

<sup>3</sup> 407 F.3d at 996-1000; See *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

**Summary of qualitative information.** Based on in-depth interviews of business owners and others, telephone surveys, public meetings and other information, there was substantial evidence of barriers to new and small businesses in the Oregon transportation contracting industry. Owners and managers of small businesses reported that public agency contracting processes and requirements, such as minimum prequalification, bonding, and insurance levels, often put small businesses at a disadvantage when competing for public sector work.

Existing relationships are an important factor in finding opportunities to bid on work according to many prime contractors and subcontractors. There is also substantial evidence that a “good ol’ boy” network negatively affects opportunities for businesses including those owned by minorities and women.

From the in-depth interviews, availability interviews and other information analyzed as part of the study, there appeared to be difficulties for minorities and women beyond those associated with being a small business. This included evidence of:

- Workplace conditions unfavorable to women and minorities in the Oregon construction industry;
- Greater difficulties for women and minorities to obtain financing;
- Different treatment of minority- and women-owned firms by bonding companies; and
- Negative stereotypes concerning minority- and women-owned firms held by some prime contractors and customers.

The combined quantitative and qualitative information indicate that there is not a level playing field for minorities, women and minority- and women-owned firms in the Oregon transportation contracting industry.

## **G. Disparity Analysis for ODOT Contracts**

Keen Independent compared the share of ODOT contract dollars going to minority- and women-owned firms with what might be expected from the availability analysis. (Disparity analysis is properly done based on utilization and availability of all MBE/WBEs, not DBEs.)

**Utilization.** Considering all FHWA- and state-funded ODOT transportation construction and engineering contracts from October 2010 through September 2014, minority- and women-owned firms received \$225 million out of the \$1.9 billion in contract dollars, or 11.7 percent of total dollars. As shown in Figure ES-5:

- About 5.1 percent of total dollars went to white women-owned firms and 6.5 percent went to minority-owned firms (including businesses owned by minority women).
- Firms certified as DBEs received 7.1 percent of total dollars. About one-half of the MBE/WBE utilization was for firms not DBE-certified at the time of contract award. This included former DBEs that are now too large to be certified or have otherwise let their certifications expire or have withdrawn from the program.

Figure ES-6 also demonstrates the drop in MBE utilization between the first two years of the study period (FFY 2011 and FFY 2012) and the most recent two years (FFY 2013 and FFY 2014). Participation of DBEs was also much lower in the FFY 2013 and FFY 2014.

Figure ES-6.  
MBE/WBE and DBE share of prime contract/subcontract dollars for ODOT FHWA- and state-funded transportation contracts, October 2010–September 2014

Group	FFY 2011 - FFY 2012	FFY 2013 - FFY 2014	Total
MBE	8.4 %	5.0 %	6.5 %
WBE	5.2	5.0	5.1
Total MBE/WBE	13.6 %	10.0 %	11.7 %
DBE	8.7 %	5.7 %	7.1 %

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

Source:  
Keen Independent availability analysis.

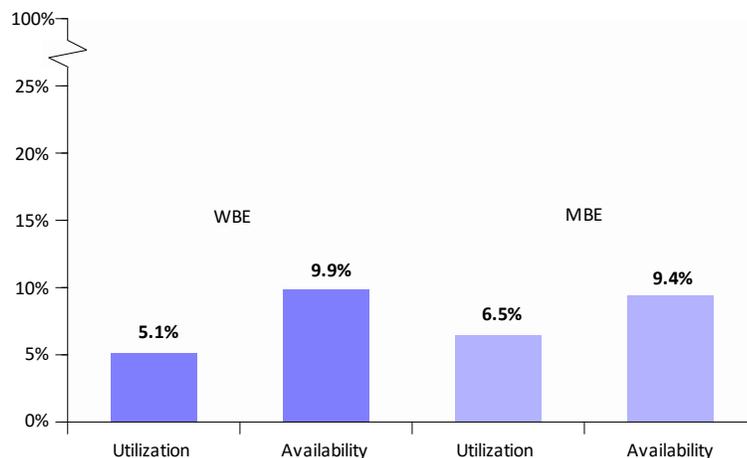
**Disparity analysis.** To conduct the disparity analysis, Keen Independent compared the actual utilization of MBE/WBEs on ODOT contracts with the percentage of contract dollars that MBEs and WBEs might be expected to receive based on their availability for that work. Keen Independent made those comparisons for MBEs, WBEs and individual MBE groups.

White women-owned firms received 5.1 percent of ODOT contract dollars (FHWA- and state-funded combined). This utilization was below what might be expected from the availability analysis — 9.9 percent. Minority-owned firms received 6.5 percent of ODOT contract dollars, a result that was also below what might be expected from the availability analysis — 9.4 percent. Figure ES-7 shows these results.

Figure ES-7.  
MBE/WBE utilization and availability for ODOT FHWA- and state-funded contracts, October 2010–September 2014

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

Source:  
Keen Independent disparity analysis for ODOT and LPA contracts.



**Calculation of disparity indices.** Keen Independent then calculated a “disparity index” to help compare utilization and availability results among MBE/WBE groups and across different sets of contracts. A disparity index of “100” indicates “parity,” or an exact match between actual utilization and what might be expected based on MBE/WBE availability for a specific set of contracts. A

disparity index of less than 100 may indicate a disparity between utilization and availability, and disparity indices of less than 80 in this report are described as “substantial” based on relevant court decisions.

The resulting disparity indices for ODOT contracts were:

- 51 for WBEs (5.1% divided by 9.9%, multiplied by 100); and
- 69 for MBEs (6.5% divided by 9.4%, multiplied by 100).

Because the indices for WBEs and for MBEs were below 80, they are “substantial.”

In addition to the above results for white women-owned firms and MBEs overall, utilization was below the availability benchmarks for the following MBE groups for the October 2010 through September 2014 study period:

- African American-owned firms received 1.7 percent of contract dollars, substantially less than what might be expected in the availability analysis (2.9%). The disparity index for this group was 58. Keen Independent identified this substantial disparity for African American-owned firms even with DBE-certified African American-owned businesses being eligible to participate in ODOT’s DBE goals for construction contracts.
- Utilization of Asian-Pacific American-owned firms (0.6%) was substantially below what might be expected from the availability analysis (0.9%), and the disparity index was 69 for this group even though DBEs owned by Asian-Pacific Americans were eligible to meet DBE contract goals in the first two years of the study period.
- Utilization of Subcontinent Asian-owned (0.6%) was somewhat less than expected from the availability analysis (0.7%). The disparity index for this group was 90, indicating a disparity even though Subcontinent Asian American-owned firms were eligible to meet DBE contract goals for construction contracts during the study period. (There was less than 0.2 percent participation of Subcontinent Asian American-owned firms for contracts without goals, with a disparity index of 24 for those contracts.)
- Native American-owned firms had a utilization of 1.3 percent, below what might be expected based on the availability analysis (2.7%). The disparity index for this group was 49.

From October 2010 through September 2014, Hispanic American-owned firms obtained 2.4 percent of ODOT contract dollars, higher than what might be expected from the availability analysis (2.3%), resulting in a disparity index of 104. Most of this utilization was two firms: Capital Concrete Construction and LaDuke Construction. The availability results for Hispanic American-owned firms are limited by the fact that neither of these firms provided information to be included in the detailed availability analysis. Capital Concrete has voluntarily surrendered its contractor’s license, no longer has a working telephone number and does not appear to be available for ODOT work. LaDuke Construction indicated that they were not interested in discussing future work for ODOT when contacted by the study team to participate in an availability interview in 2015. Even though neither

firm provided information necessary to be included in the availability analysis for Hispanic American-owned firms, both of these firms are still counted in the utilization results. (Without these two firms, utilization of Hispanic American-owned firms would have been 0.9 percent, a substantial disparity.)

Keen Independent also examined utilization and availability for Hispanic American-owned firms for the most recent two years of the study period; October 2012 through September 2014. There was a large drop in utilization of Hispanic American-owned firms in this time period, with utilization of Hispanic American-owned firms (1.2%) substantially less than availability for that time period (2.1%), resulting in a disparity index of 59. These most recent results indicate the need for a race-conscious remedy for Hispanic American-owned firms, especially given apparent changes in the operations of the two firms that accounted for most of the contract dollars for this group.

**Statistical significance of disparities.** Keen Independent also examined whether the disparities for MBEs and for WBEs could be replicated simply through “chance” in award of prime contracts and subcontracts to available firms. The study team determined that the disparities for MBEs and for WBEs are statistically significant and cannot be reasonably replicated by chance.

**Other disparity analyses.** Keen Independent analyzed the utilization and availability of minority- and women-owned firms for additional subsets of ODOT prime contracts and subcontracts. The study team identified a pattern of disparities in the utilization of MBE/WBEs across different subsets of ODOT contracts, including by contract type and by region.

## **H. Recommendations**

Study team recommendations emerged from the quantitative and qualitative results of the disparity study, especially the comments of many individuals inside and outside ODOT who provided input.

First, many of those providing input recognized ODOT’s past changes in contracting policies and practices that enhanced access for small businesses. Suggestions for further improvement, as well as Keen Independent’s assessment of results, tended to group around a set of desired outcomes regarding ODOT contracting and assistance programs. Simply put, ODOT can do more to ensure that its contracting and assistance is:

1. Open;
2. Simple;
3. Fair;
4. Transparent;
5. Impactful; and
6. Monitored and improving.

ODOT should continue top-to-bottom improvement regarding its contracting and its assistance programs.

Figure ES-8, on the following page, summarizes examples of initiatives ODOT might consider in pursuing these objectives. The initiatives are illustrative and by no means exhaustive. ODOT might find that some are not possible or effective after further review, or might be able to address the identified issue through another approach. Chapter 11 discusses these recommendations in detail.

Figure ES-8.  
Examples of potential ODOT initiatives under each objective

Objectives and recommendations
<b>1. Openness</b>
<ul style="list-style-type: none"> <li>a. Continue outreach to potential bidders, proposers, subcontractors and suppliers</li> <li>b. Disseminate information through an electronic newsletter</li> <li>c. Provide real-time training and assistance on how to win and perform work on ODOT projects</li> </ul>
<b>2. Simplicity</b>
<ul style="list-style-type: none"> <li>a. Simplify learning about, bidding on and performing ODOT work, especially small contracts</li> <li>b. Increase number of certified DBEs through targeted outreach and certification assistance</li> </ul>
<b>3. Fairness</b>
<ul style="list-style-type: none"> <li>a. Review how firm qualifications are assessed in construction and A&amp;E contract awards</li> <li>b. Implement payment notification service for subcontractors and subconsultants</li> <li>c. Explore initiatives to limit opportunities for bid shopping and other unfair contracting practices</li> <li>d. Research other ways to improve treatment of subcontractors on ODOT contracts</li> <li>e. Continue support for apprenticeships and other programs to promote entry and advancement</li> </ul>
<b>4. Transparency</b>
<ul style="list-style-type: none"> <li>a. Expand awareness of construction contract award information</li> <li>b. Provide comprehensive information about consultant contract awards, including subcontractors</li> </ul>
<b>5. Impact</b>
<ul style="list-style-type: none"> <li>a. Continue partnerships to provide general business assistance</li> <li>b. Build stronger DBEs and other small businesses within core transportation contracting disciplines</li> <li>c. Consider an ESB contract goals program for state-funded contracts</li> <li>d. Pursue changes in state law to allow expansion of Small Contracting Program and ESB/SBE Programs</li> <li>e. Consider including each DBE group as eligible for DBE contract goals program</li> </ul>
<b>6. Monitored and improving</b>
<ul style="list-style-type: none"> <li>a. Expand data collection and reporting including a comprehensive business contact list</li> <li>b. Continue to use external stakeholder groups that include DBEs and ESBs</li> <li>c. Plan future disparity studies</li> </ul>

## I. Next Steps in the Disparity Study Process

There is considerably more quantitative and qualitative information in the full report, which ODOT should review when making decisions about its future operation of the Federal DBE Program and other programs.

In March 2016, ODOT made this Executive Summary and the draft report available for public comment. ODOT also published its proposed overall DBE goal regarding FHWA-funded contracts. ODOT held public meetings in April 2016 to solicit input on both the draft report and DBE goal. Keen Independent augmented the report with public input regarding the study before finalizing the ODOT 2016 Disparity Study report. Information about this process can be found at [www.ODOTDBEstudy.org](http://www.ODOTDBEstudy.org). ODOT should review the final report and public comments before submitting its final DBE goal to FHWA for its consideration and approval.