

Oregon Department of Transportation 2016 Disparity Study



January 7, 2016
External Stakeholder Group Meeting

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Objectives for External Stakeholder Group Update Meeting

1. Update on ODOT waiver
2. Update on study progress
3. Schedule update and planned public meetings
4. Quantitative information about Oregon marketplace
5. Qualitative information about Oregon marketplace
6. Discussion
7. Next External Stakeholder Group meeting

2a. Recap study scope and purpose

- ODOT must implement the Federal DBE Program, per 49 CFR Part 26
- Disparity study provides information to help ODOT:
 - Set overall goal for DBE participation on FHWA-funded contracts
 - Consider whether ODOT can achieve overall DBE goal solely through neutral means
 - If ODOT needs to continue DBE contract goals, assess the specific race/ethnic/gender groups eligible for that program component
- USDOT instructed agencies to conduct disparity studies after 2005 Ninth Circuit decision in *Western States Paving v. Washington State DOT*
- Also, outside review of ODOT practices and other policies is useful

2b. Past meetings and other opportunities for input

January 29, 2015	kick-off meeting with ESG
February 2015	public meetings throughout Oregon
June 2, 2015	ESG project update meeting
August 25, 2015	meeting to review detailed utilization data
October 29, 2015	meeting to review detailed utilization data

Other communications include:

Press release, email blast and trade association meetings

www.odotdbestudy.org website, info@www.odotdbestudy.org dedicated email address and 503-660-8865 hotline

Availability survey

In-depth interviews and focus groups with businesses, trade associations, ODOT staff and other agencies

January – June 2016 ESG meetings, public review and comment on draft report, public meetings throughout Oregon and other input

2c. Study progress

- Analyzed information about the Oregon marketplace
(will supplement with 2016 public meeting information and other input)
- Reviewed ESG and ODOT input on utilization analysis, completing the analysis
- Currently analyzing availability data
- Will perform disparity analysis once availability analysis complete

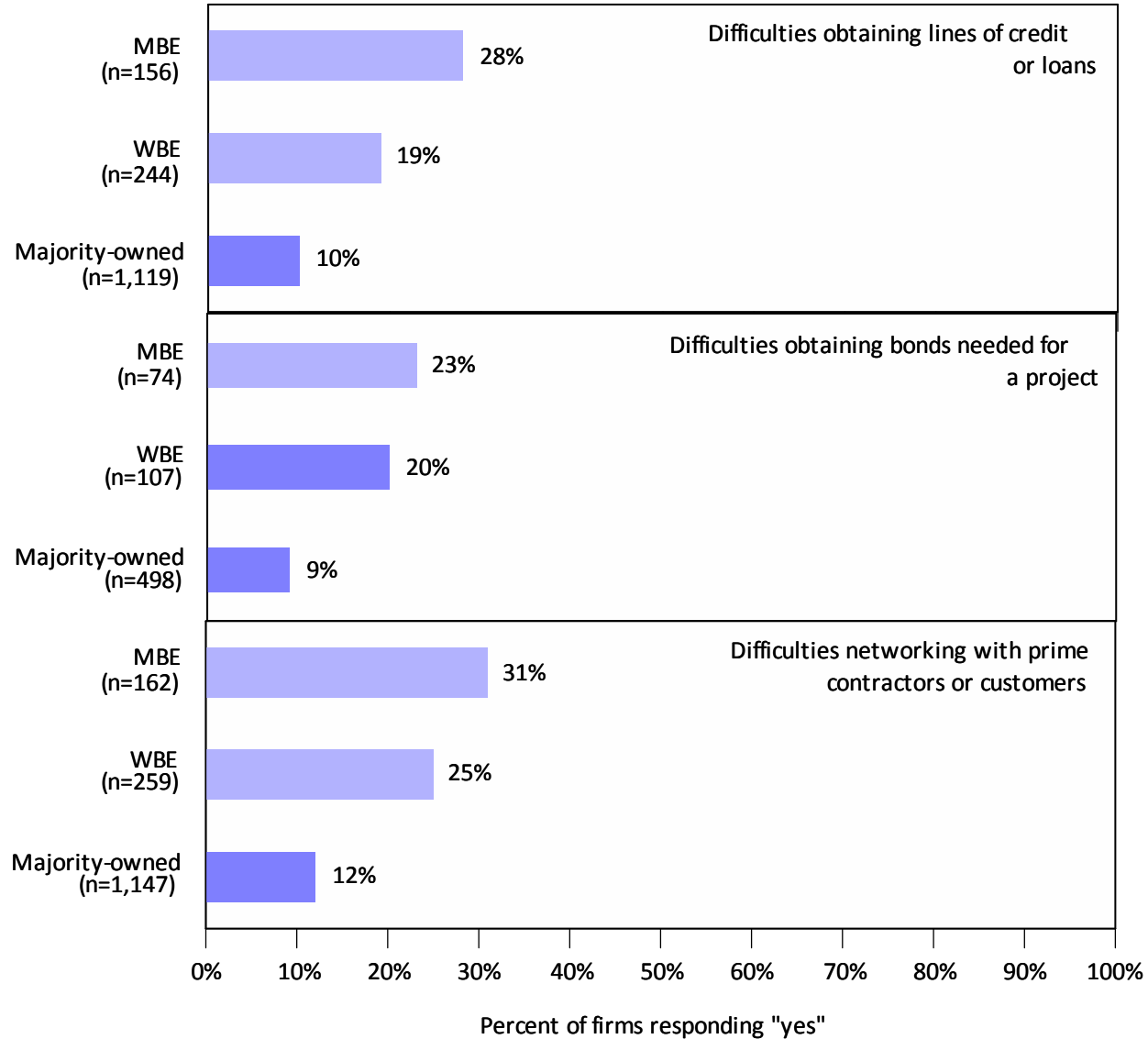
3. Update on study schedule and timing of draft report

January 7, 2016	EOC and ESG meetings Qualitative/quantitative analysis of marketplace conditions
March 18, 2016	EOC and ESG meetings Availability and disparity analyses Preliminary overall DBE goal for FHWA-funded contracts Any recommendations
On/after March 18	Release of draft report for ESG and public review/comment
Early April 2016	Public meetings (including virtual) across Oregon
Late April 2016	Close of public comment period
May 2016	EOC and ESG meetings Review of public input and any additions to analysis
June 2016	Final report complete

4a. Examples of quantitative evidence of unequal outcomes

- Limited entry of women and certain minority groups into Oregon construction and engineering industries
- Disparities in business ownership rates for:
 - Hispanic Americans, Native Americans and women working in construction
 - African Americans, Native Americans and women working in engineering
- Home ownership and home mortgages for minorities
- Business loans
- Difficulties with bonding
- Revenues of businesses
- Availability survey results concerning different barriers for businesses

4b. Examples of availability survey results



5a. Qualitative information about Oregon marketplace

- Input from more than 300 individuals, and will collect more information in April
- Key results pertain to:
 - Background on businesses
 - Economic conditions affecting the industry
 - Public and private sectors
 - Doing business as a prime contractor and as a subcontractor
 - Business success and barriers
 - Experience doing business with public agencies including ODOT
 - Allegations of unfair treatment
 - Information regarding any discrimination
 - Insights regarding business assistance programs, contracting processes or any other neutral measures
 - Insights regarding DBE/MWESB programs
 - DBE and MWESB certification

5b. Qualitative – entry into industry

Owners of construction and engineering businesses started by working in the industry

Evidence of barriers for minorities and women entering the industry

- Several women reported sexual harassment on construction sites.
- “Writing of names in Porta-Potty” is one example of harassment of minority employees.
- Mentality in the field that “women do not belong there.”
- White male business owner said that “If it’s perceived by the individual as harassment, it’s harassment” and acknowledged that his firm has had to investigate employee behavior and take appropriate actions.
- Report of difficulty for minorities and women to get into the industry because it is a small group of “old timers.”
- Comment that the chance of minority workers to be promoted on the job is “slim to none.”
- Barrier is to get one’s “foot in the door.”
- Some say “it’s improving.”

5c. Qualitative – business start-up

Very difficult to successfully start a business in transportation contracting field

- Interviewees cited access to capital (often), credit, bonding, insurance, learning about opportunities, preparing bids, licensing, taxes, regulations, equipment, finding employees, acquiring materials, not having the business owner “skill set,” need for a good business plan
- “It takes quite a bit of money to get going ... to make the payroll and do all that kind of stuff ... buy equipment”
- “It’s been challenging just growing ... keeping up with the capital needs to grow a business and staffing, too, is challenging.”
- Bonding was “... sometimes extremely tough.”
- “Finding people who would give you money to make your payroll with [abusing] you, that’s the hardest part.”
- “Money is a major problem, because a lot of us are not rich.” (She was one of the interviewees who said there were added challenges being minority or female.)
- “It’s not what you know, but who you know If you’re not part of the group, you’re out.” “I just couldn’t break through.” (minority owner of now-closed firm)

5d. Qualitative – access to capital

- Difficult for small or new firms in general, for some, financing is the “biggest barrier at start-up.”
- Some female business owners reported gender discrimination when seeking a loan, “Send your husband in on Monday, and we’ll get this [loan] finalized.”
- Some indicated no success securing access to capital, “There’s no access to capital, period. It just isn’t there.”
- Even after start-up, access to capital an issue, for example, “... even though we’ve got way over \$100,000 worth of contracts, we’re still getting tripped around as far as getting a decent size loan for operating costs.”
- Slow payment increases the need for business capital and financing, “They’ve [business owners] lost more than just their business. They are losing homes. It’s ruining their lives because they are not able to meet the financial obligations that the payrolls and business brings on them.”
- Some interviewees reported that access to capital is more difficult for minorities and women.

5e. Qualitative – bonding

Surety bonds typically required to bid public sector construction contracts

Sometimes primes require subs to have bonding

Bonding depends on financial strength of company

- Many MBEs, WBEs and other small companies said they could not obtain necessary bonding to bid on ODOT and other public contracts, or certain sizes of contracts ... they lost work as a result.
- Some interviewees said bonding companies required a personal guarantee, which some owners would not provide.
- Some said that bonding was expensive. One reported that he had to borrow money from his family in order to afford his bond.
- Some interviewees reported different treatment of minority- and women-owned firms by bonding companies: They set amounts based on their “feel” and if an agent doesn’t like your “look,” he will give you a different ratio when calculating your bonding capacity.

5f. Qualitative – insurance requirements

Construction and professional services firms bidding or proposing on ODOT and local government contracts must meet insurance requirements

Provisions often apply to subcontractors and subconsultants, no matter how small the role

Issue is cost of insurance, especially at high dollar limits or specific types

Some professional services firms reported it was their second large expense category after salaries

Some minority- and women-owned firms lost work because what they saw as unnecessary or onerous insurance requirements

- From an MBE engineering firm: “... They want you to buy this insurance which is not required for any of our work, but you can’t sign the contract until you have it ... So we basically did not sign [a local agency] contract because of that.”
- “In 2010 ... we could not find an insurance carrier who would provide professional liability insurance to a firm of our [small] size”

5g. Qualitative – business relationships

Existing relationships important factor in getting opportunities for work

For example:

- Prime contractors take price into consideration when selecting a subcontractor, but previous relationships also play a large role.
- Trust that a subcontractor will get the job done is important to a prime contract.
- “It’s relationship-based.”
- “Primes want to work with subs they know.”
- Primes often give the work to “friends.” (And this business owner said she only got opportunities when there were contract goals.)
- Many comments about “bid shopping.”

5h. Qualitative – “good ol’ boy network”

Many minority, female and white male interviewees reported the presence of a “good ol’ boy” network in Oregon that affects the construction and engineering industries

- Described as “a system that continually feeds itself” and continued by saying ODOT was a part of it.
- When describing the difficulty of minority-owned firms to break into the industry, “Most of the game is like an ‘old boy’s club, so it’s really hard to get into position.”
- Some reported that “good ol’ boy” networks negatively affect minorities and women. One said closed networks played a part in her decision to move away from strictly construction work.
- One predicted that the “good ol’ boy” mentality will likely persist for another 50 years.

5i. Qualitative – prequalification

Public agency screening of potential contractors and engineering firms through prequalification can be a barrier to bidding

Examples of input:

- Public agencies favor bidders and proposers they already know.
- One described the requirement to have experience before you can get experience as a “catch-22.”
- ODOT prequalification requirements are a challenge to meet, and they tend to write contracts “with larger businesses in mind.”
- One reported that “prequalification requirements are impossible to work with in certain scenarios.” “The requirements are so humongous They generate nothing in fact.”

5j. Qualitative – unequal treatment, double standards, stereotyping, other harassment

Many comments indicating unequal treatment, double standards, stereotyping or other harassment from minority and female interviewees

- White firms in the industry “go in [to a job and are] considered competent until proven incompetent.” “[DBEs and MBEs] go in competent and are considered incompetent [by default].”
- When asked about stereotyping ... “I see that a lot I feel [that] the stigma of being a MBE or DBE contract is [that] if you have this certification, all of a sudden you’re in this bucket of contractors that can’t do this job or can’t do that job ... you can only do these small little jobs ... we can compete with everyone else.”
- “When you are one of a few women in the room [with a lot of engineers], people sometimes think you are going to take notes.”
- “They just don’t have respect for you.”
- The construction industry is a “man’s industry.”

5k. Perceptions of DBE/MWESB Program

Some reported successes of the DBE/MWESB Programs

- Some reported opportunities “... to get in and play with the ‘big boys.’”
- Some business owners said that these programs encourage primes, that wouldn’t otherwise use them as subcontractors, use their firms. “... they [primes] wouldn’t use me if they didn’t have to.”

Some had negative comments

- Although some reported opportunities, they are not a “boost” to overall business. These report to want “worthwhile jobs,” not just a small piece of the pie.
- Some questioned the DBE contract goals, “It is clear that ODOT’s race-conscious subcontracting goals provide unfair racial preferences to some racial minorities at the expense of others.”
- It is “asinine” for ODOT to limit DBE goals to African American- and Subcontinent Asian American-owned firms.
- Some reported that meeting race-conscious goals is challenging for members that prime their work, and that some goals are particularly high.

5I. Positive experiences working with ODOT

Some had had no problems or positive experiences working with ODOT

- “I’ve never had a problem with ODOT.”
- Some indicated that ODOT does its job well, “They’re doing well They’re doing a good job ... working with people, working with subcontractors, contractors.”
- “I think ODOT does a pretty good job of trying to get firms started and connected and successful ODOT is doing everything they should be doing. I don’t know what else you [can] do”
- When asked how ODOT is succeeding, “I appreciate the fact that ... [ODOT is] continuing to look for ways to improve”
- “The ODOT personnel on subcommittees are very open-minded.”
- Other comments ranged from “making an effort” and “helpful” to “progressive.”
- “[ODOT has] always done us well. They pay faster than I can bill them.”

5m. Negative experiences working with ODOT

- Subcontractors reporting retainage issues, and untimely payment by primes indicated that ODOT “didn’t have a sympathetic ear.” And, “ODOT change order process is very slow ... we’re unpaid for six months for change orders.”
- “Extremely tough” bonding requirements challenged both subs and primes, one prime could not find subs with bonding capacity.
- An engineering business owner said, “‘catch-22’ of prequalification that’s related too tightly to performance of a particular type of work” Others reported that prequalification limits opportunities for emerging businesses that can’t meet the work history.
- Some indicated that ODOT needs a committee of contractors to review specifications, bidding processes, work execution and other key tasks.
- Some felt that ODOT contributed to closed networks and should require that primes open their doors to others outside their current networks
- A few minority business owners indicated being told that they could not bid on a project because their ethnicity did not meet the goals.
- “Paperwork! ... hoops ... you’ve got to jump through, and forms to fill out!”

6. Discussion



7. Next External Stakeholder Group meeting

- Friday, March 18, 2016
- Items for discussion will include:
 - Final utilization results, by race, ethnicity and gender, for different types of ODOT contracts within and outside Federal DBE Program
 - Results of availability analysis
 - Results of disparity analysis
 - Analysis of overall DBE goal for FHWA-funded contracts for next three years beginning FFY 2017
 - Recommendations to ODOT for improvements
 - Plan for public review of draft report
 - Schedule for public meetings and opportunities for comments