



2022 OREGON DEPARTMENT OF TRANSPORTATION DISPARITY STUDY Final Summary Report

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TABLE OF CONTENTS

2022 ODOT DISPARITY STUDY SUMMARY REPORT

Executive Summary.....	1
Introduction	2
Legal Framework.....	3
ODOT and Local Agency Procurement and the Federal DBE Program	7
Contract Data Examined	10
Utilization Analysis	14
Availability Analysis.....	20
Disparity Analysis	27
Further Exploration of Observed Disparities.....	32
Disparity Results from Other Statewide Studies.....	33
Information About Marketplace Conditions — Historical Context.....	34
Quantitative Information About Marketplace Conditions.....	42
Qualitative Information About Marketplace Conditions	47
Summary of Quantitative and Qualitative Analyses and Neutral Measures.....	55
Overall DBE Goal and Projections of Neutral Participation	68
Public Comment Process for the 2022 Disparity Study Report.....	77

SUMMARY REPORT — Executive Summary

Oregon Department of Transportation (ODOT) receives funds from the U.S. Department of Transportation. It must operate the Federal Disadvantaged Business Enterprise (DBE) Program for its federally funded contracts.

Keen Independent Research LLC (Keen Independent) conducted a disparity study to help ODOT set its next three-year overall goal for DBE participation in its Federal Highway Administration (FHWA)-funded contracts and determine whether it needs to apply DBE contract goals to help it meet its overall DBE goal. The disparity study follows federal regulations and court decisions regarding DBE and other business assistance programs.

Utilization, Availability and Disparity Analyses

Keen Independent compared the utilization and availability of minority- and white woman-owned businesses (MBE/WBEs) in ODOT's FHWA-funded contracts and in its state-funded transportation contracts.

Utilization. About 19.5 percent of the dollars of ODOT's FHWA-funded contracts from October 2017 through September 2020 went to minority- and woman-owned businesses.

Availability. Keen Independent conducted a large survey of companies in Oregon and two counties in Washington state to determine the availability of MBE/WBEs and other firms for public sector contracts.

MBE/WBEs were 29 percent of the businesses indicating qualifications and interest in public sector contracts in this survey. Through a contract-by-contract analysis of MBE/WBEs and other firms available to perform specific types, sizes and locations of ODOT and local agency contracts and subcontracts, Keen Independent determined that 23.5 percent of ODOT's FHWA-funded contract dollars would go to minority- and woman-owned firms if there were a level playing field for those firms.

The study team calculated similar “dollar-weighted” availability benchmarks to perform disparity analyses for specific sets of contracts and to help ODOT determine its new overall DBE goal.

Disparity analysis. Utilization of MBE/WBEs (19.5%) was less than what would be expected based on the dollar-weighted availability of firms qualified and interested in performing ODOT contracts and subcontracts (23.5%).

There was a large disparity for FHWA-funded contracts where ODOT did not set a DBE contract goal (7.6% utilization compared with 20.1% MBE/WBE availability). For those contracts, there were substantial disparities between the utilization and availability of African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and white woman-owned firms. When examining state-funded contracts, there was also a substantial disparity between the utilization of MBE/WBEs (15.2%) and availability (28.8%).

Marketplace Conditions

There is considerable quantitative and qualitative evidence that there is not a level playing field for people of color and women, and for minority- and woman-owned firms, in the Oregon marketplace.

Overall DBE Goal

ODOT is required to set an overall three-year goal for DBE participation in its FHWA-funded transportation contracts. Federal regulations govern how these goals are determined. For ODOT's consideration, the study team calculated a goal of at least 18.23 percent for DBE participation in ODOT's FHWA-funded contracts for FFY2023 through FFY2025, higher than its current 15.40 percent DBE goal. ODOT must decide whether it will continue to use DBE contract goals to achieve its overall DBE goal, with all DBE groups continuing to be eligible to meet a contract goal. Study results support continuing contract goals, for all DBE groups.

SUMMARY REPORT — Introduction

Agencies that receive federal funds from the U.S. Department of Transportation must operate the Federal Disadvantaged Business Enterprise (DBE) Program. The Program requires each agency to set an overall three-year goal for DBE participation in its federally funded contracts and to use race- and gender-neutral measures and, if necessary, DBE contract goals to meet that overall DBE goal.

For federal fiscal years (FFY) 2020 through 2022, ODOT has an overall goal of 15.40 percent for participation of DBEs in its contracts funded by the Federal Highway Administration. To help it achieve this level of DBE participation, ODOT sets goals for the utilization of DBEs on many of its individual FHWA-funded contracts. Bidders on those contracts must either meet the goal ODOT has set for the contract or make good faith efforts to do so. ODOT also makes race- and gender-neutral efforts to encourage participation of DBEs in its contracts.

2022 Disparity Study

ODOT retained Keen Independent Research LLC (Keen Independent) to perform its 2016 disparity study and its 2019 availability study to help it set overall annual goals and to improve how it operated the Federal DBE Program. ODOT solicited proposals and selected Keen Independent to perform the 2022 study.

The disparity study is based on relevant case law, including the Ninth Circuit decisions that favorably reviewed the study team's methodology for measuring availability, analyzing disparity, and collecting and analyzing qualitative information.

In addition to providing information for ODOT's next overall three-year DBE goal for FHWA-funded contracts, the study helps ODOT determine whether it needs to continue to apply DBE contract goals to meet its overall DBE goal.

Research methods. The study included:

- A survey of firms available to perform work on public sector transportation contracts in Oregon.
- Analysis of prime contractors and subcontractors on past FHWA-funded and state-funded contracts.
- Disparity analyses that compare participation of minority- and woman-owned firms on ODOT contracts with what would be expected from the availability analysis.
- In-depth interviews with businesses, trade association representatives and other interested individuals.
- Additional input from the study website, mail and designated telephone hotline and email address.

Study team. Local subconsultants, Donaldson Consulting and HDR, participated with Keen Independent in this study. Ms. Donaldson and Stacy Thomas (now with HDR) participated in the 2016 disparity study. The firm Holland & Knight and the survey firm Customer Research International (CRI) also assisted in the study.

Public input. The 2022 ODOT Disparity Study started in September 2021 with a draft report delivered in May 2022.

Through surveys, interviews, public meetings and other research, the study team obtained comments from more than 315 businesses, trade organizations and other groups over the course of the study. The study team successfully contacted 4,144 businesses in the availability survey.

An External Stakeholder Group of business and community representatives participated in this effort from October 2021 through June 2022.

SUMMARY REPORT — Legal framework

The legal framework for this disparity study is based on regulations for the Federal DBE Program, Official USDOT Guidance and other sources including court decisions related to the Federal DBE Program and minority- and woman-owned business enterprise programs. (Appendix A provides definitions of terms used in this study.)

History of U.S. Supreme Court and Other Cases

ODOT has been operating some version of the Federal DBE Program since the early 1980s. Several legal developments changed how ODOT implements the Program.

- The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the strict scrutiny standard of review for race-conscious programs adopted by state and local governments¹ and its 2005 decision in *Adarand Constructors, Inc. v. Peña* established the same standard of review for federal race-conscious programs.²

The study team discusses the strict scrutiny standard on the following page and in detail in Appendix L of this report.

- The Federal DBE Program has been held to be constitutional “on its face” in subsequent legal challenges, but a court may still find that an agency implementing the program fails to meet the strict scrutiny legal standard in its implementation of the Program (see Appendix L).

¹ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

² *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

³ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

- In 2005, Western States Paving Company successfully challenged Washington State Department of Transportation’s implementation of the Federal DBE Program. The U.S. Ninth Circuit Court of Appeals decision in *Western States Paving*³ affected agencies operating the Federal DBE Program located in the Ninth Circuit (including agencies in Oregon).
- Public agencies in the Ninth Circuit, including ODOT, adjusted implementation of the Federal DBE Program to comply with the *Western States Paving* case and Official USDOT Guidance⁴ issued in response to the decision.
- Some agencies in the Ninth Circuit, including ODOT, reinstated use of DBE contract goals after completing disparity studies.
- When the California Department of Transportation (Caltrans) returned to using DBE contract goals, after it completed a disparity study, its operation of the DBE Program was challenged in court. In 2013, the Ninth Circuit Court of Appeals held in *AGC, San Diego Chapter v. California DOT*⁵ that Caltrans’ implementation of the Federal DBE Program was valid and complied with its decision in *Western States Paving*.

David Keen of Keen Independent Research led the disparity study used to defend Caltrans’ implementation of the program and testified as an expert witness in that case. The methodology for the 2022 ODOT study is based on the methodology reviewed and approved by the Ninth Circuit.

⁴ USDOT Guidance, available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm (January 2006).

⁵ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187 (9th Cir. 2013).

SUMMARY REPORT — Legal framework

Strict Scrutiny Standard of Review

Different legal standards apply for judicial review of programs that are race- and gender-conscious and equity programs that have no race or gender component.

In *City of Richmond v. J.A. Croson Company*, the U.S. Supreme Court established that government contracting programs with race-conscious measures must satisfy the strict scrutiny standard of constitutional review. As described in detail in Appendix L, the strict scrutiny standard is very difficult for a government entity to meet.

Under the strict scrutiny standard, a governmental entity must have a strong basis in evidence that:

- There is a *compelling governmental interest* in remedying specific past identified discrimination or its present effects; and
- Any program adopted is *narrowly tailored* to remedy the identified discrimination. There are a number of factors a court considers when determining whether a program is narrowly tailored (see Appendix L).

A government agency must satisfy both components of the strict scrutiny standard. A race-conscious program that fails to meet either one is unconstitutional.

1. U.S. Supreme Court in 1989 that ruled in *City of Richmond v. J.A. Croson Co.*



SUMMARY REPORT — Legal framework

Intermediate Scrutiny for Gender-Based Programs

Certain Federal Courts of Appeal, including the Ninth Circuit Court of Appeals, apply the “intermediate scrutiny” standard to gender-conscious programs. It is more easily met than strict scrutiny.

The courts have interpreted this intermediate scrutiny standard to require that gender-based classifications be:

- Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
- Substantially related to the achievement of that underlying objective.⁶

Intermediate scrutiny, as interpreted by the Ninth Circuit and other federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.⁷ (See Appendix L for additional information.)

⁶ See e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P.*

v. Seibels, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also, *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”)

⁷ *Coral Constr. Co.*, 941 F.2d at 931-932; see *Eng’g Contractors Ass’n*, 122 F.3d at 910.

SUMMARY REPORT — Legal framework

Rational Basis Standard for Small Business Programs

Small business programs and other race- and gender-neutral efforts are not subject to strict scrutiny or intermediate scrutiny standards of legal review. They can be challenged in court but are more easily defended.

- Where a challenge to the constitutionality of a statute or a regulation does not involve a fundamental right or a suspect class, the appropriate level of scrutiny to apply is the rational basis standard.
- When applying rational basis review under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, a court is required to inquire “whether the challenged classification has a legitimate purpose and whether it was reasonable [for the legislature] to believe that use of the challenged classification would promote that purpose.”⁸

Courts applying the rational basis test generally find that a challenged law is upheld “as long as there could be some rational basis for enacting [it],” that is, that “the law in question is rationally related to a legitimate government purpose.”⁹

So long as a government legislature had a reasonable basis for adopting the classification the law will pass constitutional muster.¹⁰

⁸ See, e.g., *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Cunningham v. Beavers* 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a ‘highly deferential rational basis’ standard of review).

⁹ See, e.g., *Kadmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1998); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998) see also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985) (citations omitted); *Heller v. Doe*, 509 U.S. 312, 318-321 (1993) (Under rational basis standard, a legislative classification is accorded a strong presumption of validity); see, e.g., *Sherman v. Department of Revenue*, 335 Or. 468, 71 P.3d 67 (Or. S. Ct. 2003);

Knapp v. City of Jacksonville, 342 Or. 268, 151 P.3d 143 (Or. S. Ct. 2007); *Qwest Corp. v. Public Utility Comm’n*, 205 Or. App. 370, 135 P.3d 321 (Or. App. 2006); *Kane v. Beaverton*, 202 Or. App. 431, 122 P.3d 137 (Or. App. 2005).

¹⁰ *Id.*; *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013), (citing *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993)); see, e.g., *Sherman v. Department of Revenue*, 335 Or. 468, 71 P.3d 67 (Or. S. Ct. 2003); *Knapp v. City of Jacksonville*, 342 Or. 268, 151 P.3d 143 (Or. S. Ct. 2007); *Qwest Corp. v. Public Utility Comm’n*, 205 Or. App. 370, 135 P.3d 321 (Or. App. 2006); *Kane v. Beaverton*, 202 Or. App. 431, 122 P.3d 137 (Or. App. 2005).

SUMMARY REPORT — ODOT and Local Agency Procurement and the Federal DBE Program

Public Sector Procurement in Oregon

The State Public Contracting Code requires public agencies to follow specific guidelines when procuring construction, goods or services. Also, Oregon operates an Emerging Small Business (ESB) program that reserves bidding on certain small state-funded contracts to ESBs.

Figure 2 summarizes requirements for ODOT. Most of the cities and counties Keen Independent reviewed in the procurement analysis use procurement processes similar to what is summarized below.

2. ODOT procurement practices

	Construction (public improvements)	Goods and services (and non-A&E-related prof. services)	A&E, photogrammetric mapping, transportation planning, land surveying	Other services related to A&E
Bidding thresholds				
Requiring competitive sealed bids/proposals	Above \$100,000	Above \$150,000	Above \$250,000	Above \$250,000
Intermediate procurements	\$5,001–\$100,000	\$10,001–\$150,000	\$100,001–\$250,000	\$100,001–\$250,000
Small procurements ("direct appointment" for A&E)	\$5,000 or below	\$10,000 or below	\$100,000 or below	\$100,000 or below
Bidding requirements				
Competitive sealed bids/proposals	Public advertising	Public advertising	Public advertising	Public advertising
Intermediate procurements	Solicitation of at least 3 firms for quotes (internal policy)	Solicitation of at least 3 firms for quotes or proposals	Solicitation of at least 3 firms for proposals	Solicitation of at least 3 firms for proposals
Small procurements	No bidding required	No bidding required	No bidding required	No bidding required
Means of public advertising	Local newspaper and/or electronic and (if \$125,000+) a statewide trade publication	Local newspaper and/or electronic	Local newspaper and/or electronic	Local newspaper and/or electronic
Basis for award				
Competitive sealed bids	Lowest responsible bidder	Lowest responsible bidder whose bid substantially complies with requirements		
Competitive sealed proposals	Responsive proposer with the best responsive proposal	Qualifications, price and other factors	Qualifications, price and other factors	Qualifications, price and other factors
Intermediate procurements	Offer that will best serve the interests of the contracting agency	Offer that will best serve the interests of the contracting agency	Qualifications, price and other factors	Qualifications, price and other factors
Small procurements	No bidding required	No bidding required	No bidding required	No bidding required
Other				
Payment and performance bonds	100% (if \$100,000+)			

SUMMARY REPORT — ODOT and Local Agency Procurement and the Federal DBE Program

Federal DBE Program

Regulations in 49 Code of Federal Regulations (CFR) Part 26 govern how agencies implement the Federal DBE Program. Three important requirements are:

- Setting overall goals for DBE participation. (49 CFR Section 26.45)
- Meeting the maximum feasible portion of the overall DBE goal through race- and gender-neutral means. (49 CFR Section 26.51)
 - Race- and gender-neutral measures include promoting the participation of small or emerging businesses.¹¹
 - If an agency can meet its overall DBE goal solely through race- and gender-neutral means, it must not use race- and gender-conscious measures when implementing the Federal DBE Program.
- Appropriate use of race- and gender-conscious measures, such as contract-specific DBE goals. (49 CFR Section 26.51)
 - Because these measures are based on the race or gender of business owners, use of these measures must satisfy standards in order to be legally valid.

- Measures such as DBE quotas are prohibited; DBE set-asides may only be used in limited and extreme circumstances (49 CFR Section 26.43).
- Some agencies restrict eligibility to participate in DBE contract goals programs to certain racial, ethnic and gender groups based on pertinent evidence of discrimination for those groups.

Based on these requirements, agencies receiving USDOT funds set overall goals for DBE participation and use race-neutral measures to encourage DBE participation. Some public agencies, including many state departments of transportation, also use race- and gender-conscious measures such as DBE contract goals to help meet their overall DBE goals.

Note that to be certified as a DBE for participation in the Program, a firm must be socially and economically disadvantaged as defined in 49 CFR Part 26. Revenue limits, personal net worth limits and other restrictions apply. Most DBEs are minority- or woman-owned firms, but white male-owned firms that can demonstrate social and economic disadvantage can be certified as DBEs as well.

The Certification Office for Business Inclusion and Diversity (COBID) is the agency in Oregon that reviews and approves applications to be a DBE in Oregon (see Appendix M of this report for more explanation).

¹¹ Note that all use of the term “race- and gender-neutral” refers to “race-, ethnic- and gender-neutral” in this report.

SUMMARY REPORT — ODOT and Local Agency Procurement and the Federal DBE Program

USDOT Guidance

The USDOT instructs that agencies should ascertain evidence for discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26.¹² The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT's Guidance provides that recipients should consider evidence of discrimination and its effects.¹³

The USDOT's Guidance is recognized by the federal regulations as "valid, and express the official positions and views of the Department of Transportation"¹⁴ for state and local governments in the Ninth Circuit.

Some agencies limit participation in DBE contract goals to those DBE groups for which there is sufficient evidence of discrimination in the transportation contracting industry in their market area (sometimes called "underutilized DBE" or "UDBE" contract goals programs). Implementation of such contract goals programs requires approval of a waiver from USDOT.¹⁵

¹² Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation* (January 2006) [hereinafter USDOT Guidance], available at 71 Fed. Reg. 14,775; see 49 CFR Section 26.9; see, also, 49 CFR Section 26.45.

Current ODOT Operation of the Federal DBE Program

ODOT has been operating some version of the Federal DBE Program since the 1980s.

Overall DBE goal for FFY2020–FFY2022. ODOT established an overall triennial DBE goal for FFY2020 through FFY2022 of 15.37 percent DBE participation in its FHWA-funded contracts. ODOT is attempting to meet that goal through race-neutral means as well as DBE contract goals.

Race-neutral measures. Race-neutral measures implemented by ODOT include the following:

- Outreach and networking;
- Distribution of information about bid opportunities;
- Supportive services to small businesses, including education and training;
- Requirements for prompt payment (primes and subs); and
- Ability to limit bidding to ESBs for state-funded construction contracts up to \$250,000.

Appendix M describes additional measures, including how ODOT has responded to Keen Independent recommendations in the 2016 study.

DBE contract goals. ODOT sets goals for some of its FHWA-funded contracts to help it achieve its overall DBE goal. Appendix M describes operation of the DBE contract goals program element.

¹³ *Id.*

¹⁴ *Id.*, 49 CFR Section 26.9; See, 49 CFR Section 23.13.

¹⁵ 49 CFR Section 26.15.

SUMMARY REPORT — Contract data examined

Contract and Subcontract Data

ODOT provided Keen Independent data for state- and FHWA-funded transportation-related contracts awarded from Federal Fiscal Year 2018 through Federal Fiscal Year 2020 (October 1, 2017, through September 30, 2020). The 2022 Disparity Study also included local agency contracts that use ODOT-administered funds.

In total, Keen Independent examined 1,334 prime contracts and 3,017 subcontracts. (This does not include purchases primarily made from a national market.) Figure 3 presents the number and dollar value of contracts in FHWA- and state-funded contracts. Appendix B describes the methods used to compile and analyze these data.

The final Keen Independent database of contracts totaled \$1.5 billion for FFY2018–FFY2020 (the three-year study period).

3. Number and dollars of ODOT and local agency transportation contracts and subcontracts, FFY2018–FFY2020

	ODOT	Local agency	Total
Number of contracts and subcontracts			
FHWA-funded	3,071	495	3,566
State-funded	785	0	785
Total	3,856	495	4,351
Dollars (by millions)			
FHWA-funded	\$ 1,222	\$ 108	\$ 1,330
State-funded	174	0	174
Total	\$ 1,396	\$ 108	\$ 1,504

Source: Keen Independent Research from ODOT procurement data.

Types of Work in ODOT Contracts

Based on information in the contract and subcontract records, Keen Independent coded the primary type of work involved in each prime contract and subcontract using NAICS codes (North American Industry Classification System codes), augmented to show additional subspecialties. NAICS codes are standardized federal system for classifying firms into a subindustry according to the detailed type of work they perform.

To augment the NAICS codes for certain highly specialized types of work, Keen Independent also used 8-digit codes Standard Industrial Classification (SIC) codes. Specialties such as “striping or pavement marking” and “concrete flatwork” were coded through this method.

Figure 4 shows ODOT dollars of prime contracts and subcontracts, by funding source and according to the primary type of work performed. Thirty-three different types of work accounted for about 97 percent of the total FHWA-funded contract dollars. The largest category of construction spending was engineering. The availability analysis described beginning on page 20 focused on these 33 subindustries.

SUMMARY REPORT — Contract data examined

4. Dollars of ODOT and local agency FHWA- and state-funded transportation contracts and subcontracts by subindustry, FFY2018–FFY2020

Type of work	FHWA-funded		State-funded		Combined	
	Dollars (1,000s)	Percent	Dollars (1,000s)	Percent	Dollars (1,000s)	Percent
Engineering	\$ 189,732	14.26 %	\$ 13,985	8.04 %	\$ 203,717	13.54 %
General road construction and widening	166,331	12.50	31,983	18.38	198,313	13.18
Asphalt, concrete or other paving	132,595	9.97	38,679	22.23	171,274	11.38
Bridge and elevated highway construction	104,350	7.84	1,084	0.62	105,434	7.01
Temporary traffic control	74,702	5.61	1,575	0.91	76,277	5.07
Concrete flatwork (including sidewalk, curb and gutter)	72,123	5.42	5,354	3.08	77,477	5.15
Electrical work including lighting and signals	64,038	4.81	4,507	2.59	68,545	4.56
Asphalt, concrete or other paving materials	53,677	4.03	0	0	53,677	3.57
Installation of guardrails, fencing or signs	42,781	3.22	5,499	3.16	48,280	3.21
Transportation planning	40,308	3.03	5,568	3.20	45,875	3.05
Concrete repair	38,397	2.89	129	0.07	38,526	2.56
Excavation, site prep, grading and drainage	37,518	2.82	1,848	1.06	39,365	2.62
Pavement surface treatment (such as sealing)	32,936	2.48	11,286	6.49	44,222	2.94
Painting for road or bridge projects	32,544	2.45	274	0.16	32,818	2.18
Structural steel work	32,332	2.43	653	0.38	32,985	2.19
Striping or pavement marking	28,866	2.17	1,864	1.07	30,730	2.04
Surveying and mapping	22,394	1.68	168	0.10	22,562	1.50
Landscaping and related work, including erosion control	19,353	1.45	4,655	2.67	24,007	1.60
Drilling and foundations	15,925	1.20	1,310	0.75	17,235	1.15
Environmental consulting	13,429	1.01	632	0.36	14,061	0.93

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Contract data examined

4. Dollars of ODOT and local agency FHWA- and state-funded transportation contracts and subcontracts by subindustry, FFY2018–FFY2020 (continued)

Type of work	FHWA-funded		State-funded		Combined	
	Dollars (1,000s)	Percent	Dollars (1,000s)	Percent	Dollars (1,000s)	Percent
Construction management	\$ 10,467	0.79 %	\$ 0	0 %	\$ 10,467	0.70 %
Inspection and testing	10,272	0.77	1,269	0.73	11,541	0.77
Communications and outreach	10,091	0.76	2,114	1.21	12,205	0.81
Trucking and hauling	9,693	0.73	0	0	9,693	0.64
Construction remediation and clean-up	8,635	0.65	4,161	2.39	12,795	0.85
Wrecking and demolition	8,477	0.64	20	0.01	8,496	0.56
Custom computer programming services	7,896	0.59	4,514	2.59	12,410	0.82
Pavement milling	7,534	0.57	1,319	0.76	8,853	0.59
Steel	3,063	0.23	0	0	3,063	0.20
Fence or guardrail materials	2,228	0.17	11	0.01	2,239	0.15
Other concrete work	2,164	0.16	1,312	0.75	3,476	0.23
Other heavy and civil engineering construction	803	0.06	1,701	0.98	2,503	0.17
Aggregate materials supply	712	0.05	0	0	712	0.05
Total identified subindustries	\$ 1,296,363	97.44 %	\$ 147,473	84.75 %	\$ 1,443,836	95.97 %
Other construction	\$ 11,849	0.89 %	\$ 20,663	11.87 %	\$ 32,513	2.16 %
Other professional services	10,375	0.78	4,871	2.80	15,246	1.01
Other goods	3,682	0.28	0	0	3,682	0.24
Other services	8,170	0.61	1,005	0.58	9,175	0.61
Total	\$ 1,330,439	100.00 %	\$ 174,012	100.00 %	\$ 1,504,451	100.00 %

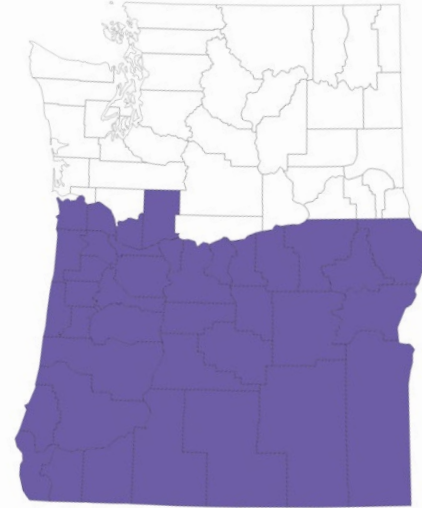
Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Contract data examined

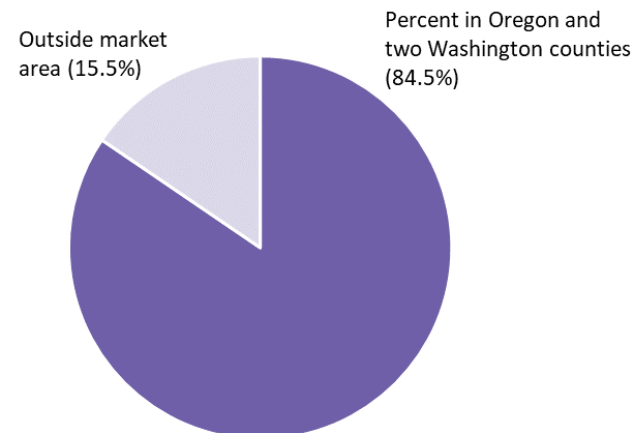
Firms with locations in Oregon and the two counties in southwest Washington (Clark and Skamania counties) performed most of the dollars of the FHWA- and state-funded contracts and subcontracts.

- The “geographic market area” for ODOT contracts extends beyond Oregon to include Clark and Skamania counties in Washington state (see Figure 5).
- As shown in Figure 6, businesses in Oregon and the two Washington counties account for 84 percent of FHWA- and state-funded transportation contract dollars from October 2017 through September 2020 (after exclusion of purchases typically made from national markets).
- Keen Independent’s availability analysis and research on the local marketplace focused on this geographic area.

5. Geographic market area for ODOT transportation contracts



6. Percentage of ODOT and local agency transportation contract dollars going to firms with locations in Oregon and two Washington counties, FFY2018–FFY2020



Source: Keen Independent Research from ODOT contract data.

SUMMARY REPORT — Utilization analysis

Keen Independent examined the ownership of firms performing ODOT and local agency FHWA- and state-funded contracts awarded from October 1, 2017, through September 30, 2020.

FHWA-Funded Contracts

All FHWA-funded contracts. Of the \$1.3 billion in FHWA-funded contract dollars, about 21 percent went to minority- and woman-owned companies. (Unless otherwise specified, each of the tables showing utilization results combines ODOT and local government contracts.)

Participation of MBE/WBEs included:

- A total of \$34.7 million (in 94 contracts and subcontracts) going to 29 different Hispanic American-owned businesses;
- \$30.5 million to 12 Native American-owned firms;
- \$30.0 million to 29 African American American-owned firms;
- \$16.5 million to 13 Asian-Pacific American-owned firms;
- \$14.0 million to seven Subcontinent Asian American-owned businesses; and
- \$133 million (695 contracts and subcontracts) to 117 different white woman-owned companies.

Of the \$259 million of contract dollars awarded to MBE/WBEs, \$199 million went to firms certified as DBEs, with the balance going to non-certified firms (see the bottom portion of Figure 7). Keen Independent’s estimate of DBE participation on FHWA-funded contracts during the study period is comparable to the overall DBE participation that ODOT reported to FHWA for those federal fiscal years.

Appendix B describes the methods Keen Independent used to identify the ownership of companies performing ODOT contracts and subcontracts.

7. Dollars of ODOT FHWA-funded contracts going to MBEs, WBEs and other firms, FFY2018–FFY2020

	Number of procurements	Dollars (1,000s)	Percent of dollars
Business ownership			
African American-owned	100	\$ 30,091	2.26 %
Asian-Pacific American-owned	58	16,462	1.24
Subcontinent Asian American-owned	28	14,002	1.05
Hispanic American-owned	94	34,683	2.61
Native American-owned	64	30,508	2.29
Total MBE	344	\$ 125,746	9.45 %
WBE (white woman-owned)	695	133,209	10.01
Total MBE/WBE	1,039	\$ 258,955	19.46 %
Majority-owned firms	2,527	1,071,484	80.54
Total	3,566	\$ 1,330,439	100.00 %
DBE-certified firms			
African American-owned	92	\$ 27,812	2.09 %
Asian-Pacific American-owned	55	15,759	1.18
Subcontinent Asian American-owned	25	13,862	1.04
Hispanic American-owned	73	25,370	1.91
Native American-owned	48	27,405	2.06
Total MBE	293	\$ 110,208	8.28 %
WBE (white woman-owned)	439	89,353	6.72
Total DBE-certified	732	\$ 199,561	15.00 %
Non-DBE	2,834	1,130,878	85.00
Total	3,566	\$ 1,330,439	100.00 %

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Utilization analysis

FHWA-funded contracts with DBE contract goals. Figure 8 provides MBE/WBE utilization for FHWA-funded contracts with DBE goals.

White woman-owned firms (11.0%) accounted for most of the total participation of MBE/WBEs on FHWA-funded contracts without goals.

In total, 22.5 percent of ODOT contract dollars went to minority and woman-owned firms.

As with the other utilization tables, the bottom portion of Figure 8 examines dollars going to different groups based on whether they were certified as DBEs. As shown, DBEs received 17.9 percent of ODOT contract dollars when DBE contract goals were applied, which was higher than the participation of DBEs for all FHWA-funded contracts (15%) reported in Figure 7.

8. Dollars of ODOT FHWA-funded contracts with DBE contract goals going to MBEs, WBEs and other firms, FFY2018–FFY2020

	Number of procurements	Dollars (1,000s)	Percent of dollars
Business ownership			
African American-owned	91	\$ 29,481	2.78 %
Asian-Pacific American-owned	55	16,341	1.54
Subcontinent Asian American-owned	24	13,647	1.29
Hispanic American-owned	77	32,803	3.10
Native American-owned	54	29,631	2.80
Total MBE	301	\$ 121,903	11.51 %
WBE (white woman-owned)	534	116,517	11.00
Total MBE/WBE	835	\$ 238,421	22.50 %
Majority-owned firms	1,905	821,124	77.50
Total	2,740	\$ 1,059,545	100.00 %
DBE-certified firms			
African American-owned	83	\$ 27,203	2.57 %
Asian-Pacific American-owned	52	15,638	1.48
Subcontinent Asian American-owned	24	13,647	1.29
Hispanic American-owned	59	24,151	2.28
Native American-owned	41	27,295	2.58
Total MBE	259	\$ 107,933	10.19 %
WBE (white woman-owned)	355	82,162	7.75
Total certified	614	\$ 190,095	17.94 %
Non-DBE	2,126	869,450	82.06
Total	2,740	\$ 1,059,545	100.00 %

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Utilization analysis

FHWA-contracts without DBE goals. ODOT did not set DBE contract goals on FHWA-funded contracts under \$1 million. There were also some FHWA-funded contracts above \$1 million that did not have goals.

Figure 9 provides MBE/WBE utilization for FHWA-funded contracts without DBE goals.

In total, 7.6 percent of the dollars on ODOT FHWA-funded contracts without DBE contract goals went to minority and woman-owned firms, considerably less than for FHWA-funded contracts with contract goals.

This MBE/WBE participation was split between firms certified as DBEs (3.5 percentage points) and firms that were not DBE-certified (4.1 percentage points).

9. Dollars of ODOT FHWA-funded contracts without DBE contract goals going to MBEs, WBEs and other firms, FFY2018–FFY2020

	Number of procurements	Dollars (1,000s)	Percent of dollars
Business ownership			
African American-owned	9	\$ 610	0.23 %
Asian-Pacific American-owned	3	121	0.04
Subcontinent Asian American-owned	4	355	0.13
Hispanic American-owned	17	1,880	0.69
Native American-owned	10	877	0.32
Total MBE	43	\$ 3,842	1.42 %
WBE (white woman-owned)	161	16,692	6.16
Total MBE/WBE	204	\$ 20,534	7.58 %
Majority-owned firms	622	250,360	92.42
Total	826	\$ 270,894	100.00 %
DBE-certified firms			
African American-owned	9	\$ 610	0.23 %
Asian-Pacific American-owned	3	121	0.04
Subcontinent Asian American-owned	1	215	0.08
Hispanic American-owned	14	1,219	0.45
Native American-owned	7	110	0.04
Total MBE	34	\$ 2,274	0.84 %
WBE (white woman-owned)	84	7,191	2.65
Total certified	118	\$ 9,466	3.49 %
Non-DBE	708	261,429	96.51
Total	826	\$ 270,894	100.00 %

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Utilization analysis

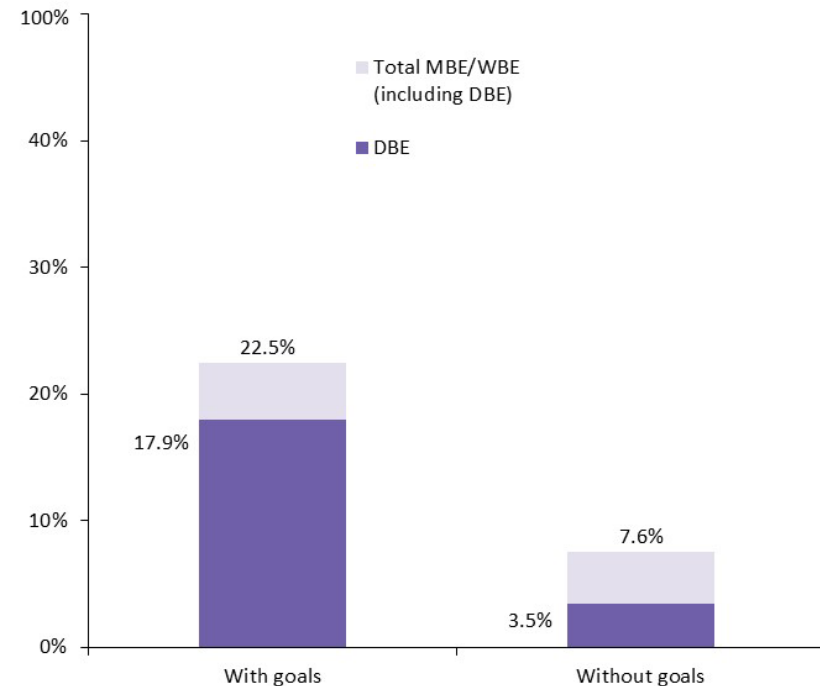
Summary of MBE/WBE utilization on FHWA-funded contracts.

Figure 10 compares the utilization of minority- and woman-owned companies on FHWA-funded contracts with and without DBE contract goals.

- The portion of each bar in dark purple represents the share of total contract dollars going to firms certified as DBEs (e.g., 3.5% for contracts without goals).
- The lighter portion of each bar is utilization of minority- and woman-owned firms not certified as DBEs (4.1% for contracts without goals). Note that the numerical percentages are not written out for this participation of non-certified firms.
- The numeral at the top of each bar shows total MBE/WBE participation for firms that were and were not DBE-certified (e.g., 7.6% for contracts without goals).

Figure 10 demonstrates that the share of FHWA-funded contract dollars going to MBE/WBEs was much lower on FHWA-funded contracts without goals (7.6%) than contracts with goals (22.5%).

10. Comparison of MBE/WBE utilization on ODOT FHWA-funded contracts with and without DBE contract goals, FFY2018–FFY2020



Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Utilization analysis

State-Funded Contracts

Keen Independent examined \$174 million of state-funded transportation contracts for FFY2018 through FFY2020.

ODOT did not set DBE contract goals on any of these contracts, but the State’s Emerging Small Business (ESB) program applied to some of these contracts. The top portion of Figure 11 shows the number, dollars and share of dollars of state-funded contracts going to MBE/WBEs. The bottom portion examines utilization of firms certified as DBEs compared with firms that were not DBE-certified.

All of these state-funded contracts were awarded by ODOT (there were no local agency contracts in these data).

MBE/WBE utilization. Participation of MBE/WBEs included:

- \$8.6 million going to 13 Hispanic American-owned businesses;
- \$5.6 million going to three Native American-owned firms;
- \$2.8 million to five Subcontinent Asian American-owned businesses;
- \$2.2 million to six Asian-Pacific American-owned; and
- No contracts or subcontracts awarded to firms identified as African American-owned.

White woman-owned businesses received \$6.9 million or about 4.0 percent of state-funded contract dollars. There were 38 different white woman-owned companies that received 89 state-funded prime contracts or subcontracts during the study period.

DBE utilization. Of the \$26.6 million of state-funded contract dollars awarded to MBE/WBEs, \$16.0 million went to firms that were certified as DBEs (shown in the bottom of Figure 9).

11. Dollars of ODOT state-funded contracts going to MBEs, WBEs and other firms, FFY2018–FFY2020

	Number of procurements	Dollars (1,000s)	Percent of dollars
Business ownership			
African American-owned	0	\$ 0	0.00 %
Asian-Pacific American-owned	6	2,230	1.28
Subcontinent Asian American-owned	8	2,805	1.61
Hispanic American-owned	33	8,594	4.94
Native American-owned	15	5,557	3.19
Total MBE	62	\$ 19,186	11.03 %
WBE (white woman-owned)	89	6,915	3.97
Total MBE/WBE	151	\$ 26,101	15.00 %
Majority-owned firms	634	147,911	85.00
Total	785	\$ 174,012	100.00 %
DBE-certified firms			
African American-owned	0	\$ 0	0.00 %
Asian-Pacific American-owned	4	1,409	0.81
Subcontinent Asian American-owned	1	42	0.02
Hispanic American-owned	9	5,916	3.40
Native American-owned	15	5,557	3.19
Total MBE	29	\$ 12,924	7.43 %
WBE (white woman-owned)	33	3,091	1.78
Total DBE-certified	62	\$ 16,015	9.20 %
Non-DBE	723	157,998	90.80
Total	785	\$ 174,012	100.00 %

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Utilization analysis

ESB utilization. Keen Independent also identified firms receiving state-funded contracts that were certified as Emerging Small Businesses (ESBs). Figure 12 presents these results.

Participation of MBEs included:

- \$1.1 million going to two Native American-owned businesses;
- \$0.5 million going to six Hispanic American American-owned firms;
- \$0.1 million to two Asian Pacific American-owned businesses; and
- No contracts or subcontracts awarded to firms identified as African American or Subcontinent Asian American-owned.

White woman-owned businesses received \$2.4 million or 1.4 percent of state-funded contract dollars. There were 17 different white woman-owned companies that received 51 state-funded prime contracts or subcontracts during the study period.

White male-owned firms obtained \$15.2 million or 8.7 percent of state-funded contracts. Fifty-four white male-owned firms received 210 prime contracts or subcontracts.

During the study period, the ESB program can be applied to state-funded contracts of less than \$100,000.

12. Dollars of state-funded contracts going to ESBS and other firms, FFY2018–FFY2020

	Number of procurements	Dollars (1,000s)	Percent of dollars
ESB-certified firms			
African American-owned	0	\$ 0	0.00 %
Asian-Pacific American-owned	2	152	0.09
Subcontinent Asian American-owned	0	0	0.00
Hispanic American-owned	16	480	0.28
Native American-owned	13	1,143	0.66
Total MBE	31	\$ 1,775	1.02 %
WBE (white woman-owned)	51	\$ 2,397	1.38 %
White male-owned ESB	210	15,203	8.74
Total ESB-certified	292	\$ 19,374	11.13 %
Non-ESB	493	154,638	88.87
Total	785	\$ 174,012	100.00 %

Source: Keen Independent Research from ODOT procurement data.

SUMMARY REPORT — Availability analysis

Keen Independent performed a survey of available firms to provide data for the benchmark used in the disparity analysis and when preparing a new overall goal for DBE participation in ODOT contracts. The study team contacted businesses in the geographic market area to identify companies indicating they were qualified and interested (ready, willing and able) to work on ODOT transportation contracts and subcontracts. The survey asked about the types of work performed, ability to work in a specific location, size of contracts bid and the race, ethnicity and gender ownership of the firm. Figure 13 provides an overview of the steps.

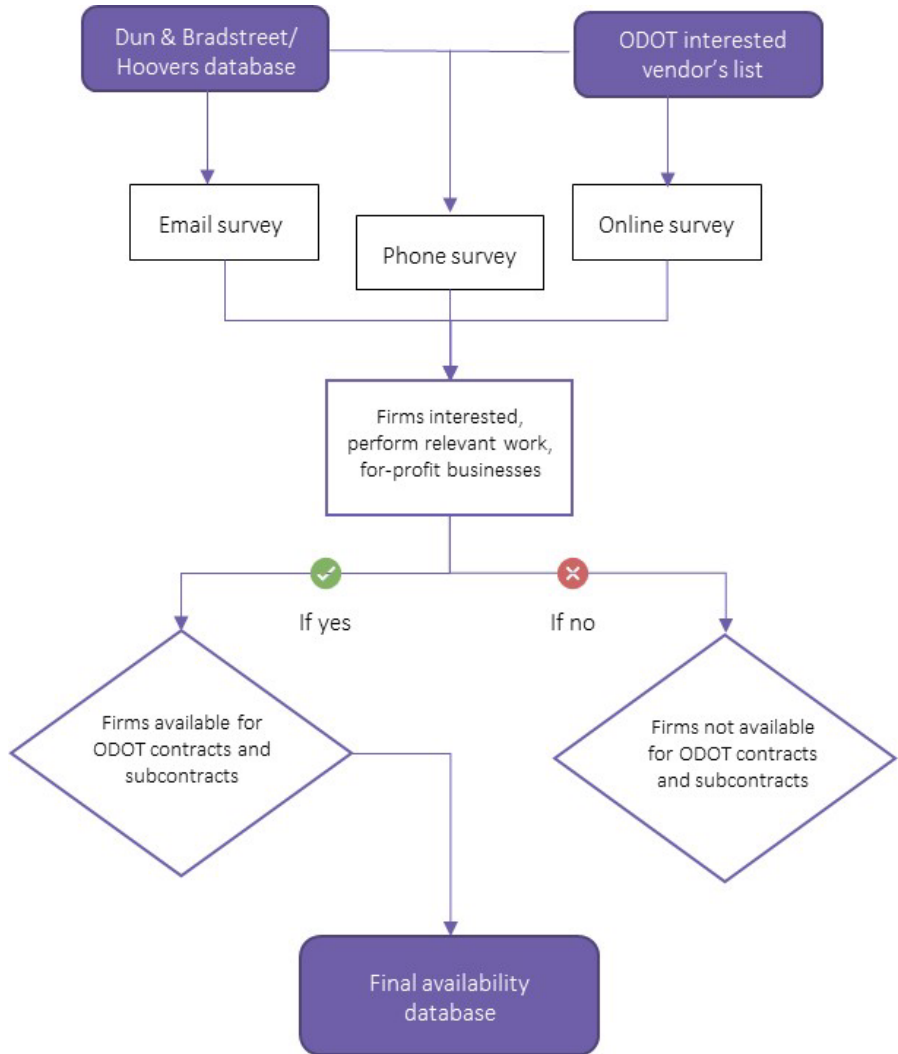
Methodology

List of firms to be surveyed. In addition to an ODOT list of firms interested in bidding on its contracts, Keen Independent compiled the list of firms to be contacted in the availability survey from the Dun & Bradstreet (D&B) Hoover’s business establishment database. Use of D&B information has been accepted and approved in connection with disparity study methodology. The study team obtained listings for companies that D&B identified as:

- Having a location in Oregon or in two counties in Washington State (Clark and Skamania); and
- Performing work or providing goods the study team determined were potentially related to ODOT transportation contracts and subcontracts.

More than 13,000 business establishments were on this initial list. Only some of the firms were determined to be qualified and interested in ODOT contracts, as described below. (Appendix C provides additional information.)

13. Keen Independent ODOT availability survey process



SUMMARY REPORT — Availability analysis

Availability surveys. The study team conducted telephone surveys with business owners and managers of businesses on the D&B list. Customer Research International (CRI) performed the surveys under Keen Independent’s direction. Surveys were conducted between December 2021 and January 2022.

CRI used the following steps to complete telephone surveys with business establishments.

- CRI contacted firms by telephone.¹⁶ There were 9,711 business establishments called that had working phone numbers for the correct business.
- Interviewers indicated that the calls were made on behalf of Oregon Department of Transportation to gather information about companies interested in performing work for ODOT or to other cities and counties in Oregon.
- Some firms indicated in the phone calls that they did not perform relevant work or had no interest in work with ODOT or other cities and counties in Oregon, so no further survey questions were necessary. (Such surveys were treated as complete at that point.)
- When a business was unable to conduct the interview in English, the study team called back with a bilingual interviewer (English/Spanish) to collect basic information about the company. Keen Independent then followed up with these firms with a bilingual interviewer to offer the option of filling out a written version of the full survey (in English).
- Up to eight phone calls were made at different times of day and different days of the week to attempt to reach each company.

¹⁶ The study team offered business representatives the option of completing surveys via fax or email if they preferred not to complete surveys via telephone. Businesses were also able to complete the survey on the study website.

SUMMARY REPORT — Availability analysis

Information collected. Survey questions covered topics including:

- Status as a private business (as opposed to a public agency or not-for-profit organization);
- Status as a subsidiary or branch of another company;
- Types of work performed or goods supplied;
- Qualifications and interest in performing work or supplying goods for ODOT or other public agencies;
- Qualifications and interest in performing work as a prime contractor or as a subcontractor;
- Largest prime contract or subcontract bid on or performed in the previous five years;
- Regions in Oregon where the company can perform work;
- Year of establishment; and
- Race/ethnicity and gender of firm owners.

Screening of firms for the availability database. Keen Independent considered businesses to be potentially available for ODOT contracts or subcontracts if they reported possessing all of the following characteristics:

- Were a private business;
- Were able to do work in an Oregon region (Portland/Hood River, Northwest, Southwest, Central and Eastern); and
- Reported qualifications and interest in work with ODOT and whether they were interested in prime contracts or subcontracts or both.

SUMMARY REPORT — Availability analysis

Availability Survey Results

The study team successfully contacted 4,144 businesses in this survey, or 43 percent of the 11,026 firms that were called that had working phone numbers. Most of these businesses indicated that they were not interested in ODOT work. There were 724 businesses in the final database of companies indicating qualifications and interest in ODOT contracts or subcontract.

- About 13.5 percent of firms in the market area available for ODOT transportation contracts were owned by people of color and 15.6 percent were owned by white women. In total, MBE/WBEs accounted for about 29 percent of available firms.
- “Majority-owned firms” are companies that are not MBE/WBEs. They comprised 71 percent of the firms available for ODOT contracts.
- Only some of these MBE/WBE firms were certified as DBEs under the Federal DBE Program. Of the total available firms, 24 percentage points were MBE/WBEs that were not DBE-certified and 5 percentage points were DBE-certified.

Appendix C provides information about availability survey response rates, confidence intervals and analysis of any differences in response rates between groups.

Figure 14 presents the number of businesses included in the availability database for each racial/ethnic group. Results for the 2022 survey are very similar to the 2019 and 2016 studies, with the exception of African American-owned firms, which comprised a larger share of available firms in 2022.

14. Number of businesses included in the availability database, 2021

Race/ethnicity and gender	2022 Study		2019 Study	2016 Study
	Number of firms	Percent of firms	Percent of firms	Percent of firms
African American-owned	32	4.42 %	1.67 %	2.32 %
Asian-Pacific American-owned	13	1.80	1.93	1.65
Subcontinent Asian American-owned	5	0.69	0.88	0.92
Hispanic American-owned	29	4.01	3.78	3.48
Native American-owned	19	2.62	2.37	2.14
Total MBE	98	13.54 %	10.63 %	10.49 %
WBE (white woman-owned)	113	15.61	16.87	16.72
Total MBE/WBE	211	29.14 %	27.50 %	27.21 %
Majority-owned firms	513	70.86	72.50	72.79
Total	724	100.00 %	100.00 %	100.00 %

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

Source: Keen Independent Research 2021 availability survey.

SUMMARY REPORT — Availability analysis

Methodology for Developing Dollar-Weighted Availability Benchmarks

Although MBE/WBEs comprise a large share of total firms available for ODOT contracts, there are industry specializations in which there are relatively few minority- and woman-owned firms. Also, Keen Independent found that minority-owned firms were less likely than other companies to be available for the largest ODOT FHWA-funded contracts (see discussion of bid capacity in Appendix H).

Keen Independent conducted a contract-by-contract availability analysis based on the specific types and sizes of ODOT contracts and subcontracts from October 1, 2017, through September 30, 2020, and dollar-weighted those results.

- The study team used the availability database developed in this study, including information about the type of work a firm performed, ability to do work in a geographic location, the size of contracts or subcontracts it bid, and the race, ethnicity and gender of its ownership.
- To determine availability for a contract or subcontract, Keen Independent first identified and counted the firms indicating that they performed that type of work of that size.
- The study team then calculated the MBE and WBE share of firms available for that contract (by group).

Once availability had been determined for every ODOT contract and subcontract, Keen Independent weighted the availability results based on the share of total ODOT contract dollars that each contract represented.

Figure 15 provides an example of this dollar-weighted analysis. Appendix C further discusses these methods.

15. Example of an availability calculation for an ODOT subcontract

One of the subcontracts examined was for temporary traffic control site (\$12,689) on a 2020 contract in Northwest Oregon. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- Were in business in 2020;
- Indicated that they performed temporary traffic control work;
- Reported ability to perform work in Northwest Oregon;
- Indicated qualifications and interest in such subcontracts; and
- Reported bidding on work of similar or greater size in the past five years in Oregon.

There were 45 businesses in the availability database that met those criteria. Of those businesses, 11 were MBE/WBEs. Therefore, MBE/WBE availability for the subcontract was 24 percent (i.e., $11/45 = 24.4\%$).

The contract weight was $\$12,689 \div \$1.5 \text{ billion} = 0.001\%$ (equal to its share of total procurement dollars). Keen Independent made this calculation for each prime contract and subcontract.

SUMMARY REPORT — Availability analysis

Dollar-Weighted Availability Results

Keen Independent used the approach described on the previous page to estimate the availability of MBE/WBEs and majority-owned businesses for FHWA- and state-funded prime contracts and subcontracts.

Availability analysis indicates that about 23.5 percent of ODOT FHWA-funded contract dollars might be expected to have gone to minority- and woman-owned businesses during the FFY2018–FFY2020 study period. The left-hand column of Figure 16 provides these availability benchmarks. (Note that these results include FHWA-funded contracts awarded by local agencies.)

The dollar-weighted availability estimate for state-funded contracts during the study period (28.8% for MBE/WBEs) is greater than the FHWA-funded contracts (23.5%) due to a different mix of types, sizes and locations of contracts and subcontracts.

MBE/WBE dollar-weighted availability for all contracts combined (24.1%) is similar to availability results for FHWA-funded contracts.

Note that not all of these MBE/WBEs are currently DBE-certified or would be eligible for certification, as further discussed later in this Summary Report.

16. Dollar-weighted MBE/WBE availability for ODOT FHWA- and state-funded contracts, FFY2018–FFY2020

Race/ethnicity and gender	FHWA	State	Total
African American-owned	9.31 %	9.07 %	9.28 %
Asian-Pacific American-owned	0.66	1.28	0.73
Subcontinent Asian American-owned	0.20	0.26	0.21
Hispanic American-owned	1.86	3.39	2.03
Native American-owned	2.06	2.58	2.12
Total MBE	14.08 %	16.58 %	14.37 %
WBE (white woman-owned)	9.38	12.18	9.71
Total MBE/WBE	23.46 %	28.76 %	24.08 %
Majority-owned firms	76.54	71.24	75.92
Total	100.00 %	100.00 %	100.00 %

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

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Availability analysis

Figure 17 presents overall dollar-weighted availability estimates by MBE/WBE group for FHWA-funded contracts with goals and without DBE goals

The dollar-weighted availability estimate for FHWA-funded contracts without goals (20.1% for MBE/WBEs) is lower than the FHWA-funded contracts with goals (24.3%) due to a somewhat different mix of type, size and region for these sets of contracts and subcontracts.

17. Dollar-weighted MBE/WBE availability for ODOT FHWA-funded contracts with and without goals, FFY2018–FFY2020

Race/ethnicity and gender	FHWA-funded contracts with goals	FHWA-funded contracts without goals
African American-owned	10.26 %	5.57 %
Asian-Pacific American-owned	0.56	1.04
Subcontinent Asian American-owned	0.14	0.44
Hispanic American-owned	2.02	1.21
Native American-owned	2.24	1.36
Total MBE	15.22 %	9.62 %
WBE (white woman-owned)	9.10	10.48
Total MBE/WBE	24.32 %	20.10 %
Majority-owned firms	75.68	79.90
Total	100.00 %	100.00 %

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

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Disparity analysis

All FHWA-Funded Contracts

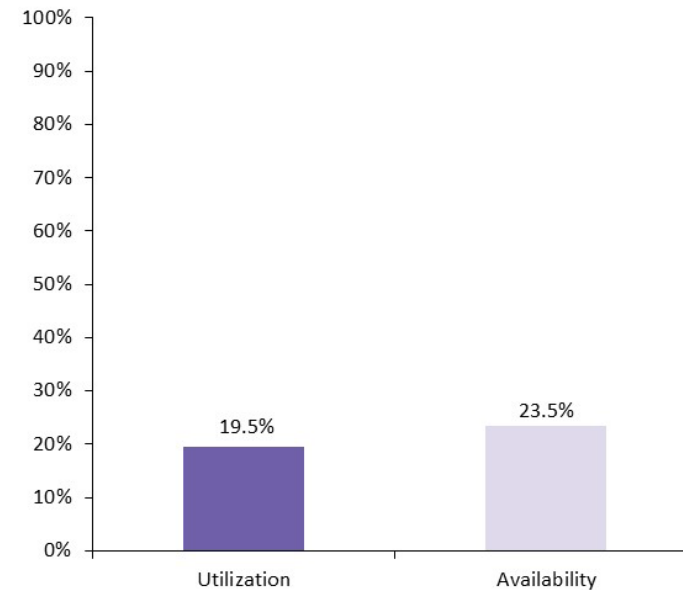
Disparity analyses compare the share of contract dollars going to minority- and woman-owned businesses with the share that might be expected based on the availability analysis for those contracts.

The estimates of share of contract dollars going to MBE/WBEs in Figure 18 and subsequent graphs and tables come from the utilization analyses presented in pages 14 through 19 of this Summary Report. The availability benchmarks in the disparity analyses come from the dollar-weighted availability estimates described in the Availability section of the Summary Report (pages 25 and 26).

As shown in Figure 18, the share of ODOT FHWA-funded contract dollars going to minority- and woman-owned firms for FFY2018–FFY2020 (19.5%) was lower than what might be expected based on the analysis of firms available to do business with ODOT (23.5%).

The Federal DBE Program applied to these contracts and many had DBE contract goals. (As previously mentioned, this analysis includes contracts that ODOT awarded and those using FHWA funds that local agencies awarded.)

18. Utilization and availability of MBE/WBEs for ODOT FHWA-funded contracts, FFY2018–FFY2020



Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Disparity analysis

Figure 19 compares utilization and availability for each MBE group and for white woman-owned firms for FHWA-funded contracts.

- Utilization of African American-owned companies was below what would be expected based on the dollar-weighted availability of those firms for ODOT and local agency contracts.
- Utilization exceeded availability benchmarks for other groups.

Following direction from court decisions, Keen Independent calculated disparity indices to compare utilization and availability.

- A disparity index is calculated by dividing utilization by availability and multiplying by 100, where a value of “100” equals parity.
- An index of less than 80 is described as “substantial.”¹⁷
- Disparity indices were below 80, and therefore substantial, for African American-owned firms for ODOT FHWA-funded contracts, even with the Federal DBE Program in place.

19. Disparity analysis for ODOT FHWA-funded contracts, FFY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	2.26 %	9.31 %	24
Asian-Pacific American-owned	1.24	0.66	187
Subcontinent Asian American-owned	1.05	0.20	200+
Hispanic American-owned	2.61	1.86	140
Native American-owned	2.29	2.06	111
Total MBE	9.45 %	14.08 %	67
WBE (white woman-owned)	10.01	9.38	107
Total MBE/WBE	19.46 %	23.46 %	83
Majority-owned	80.54	76.54	105
Total	100.00 %	100.00 %	

Note: Numbers may not add to totals due to rounding.
Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

¹⁷ Courts deem a disparity index below 80 as being “substantial” and have accepted it as evidence of adverse impacts against MBE/WBEs. For example, see, e.g., *Ricci v. DeStefano*, 557 U.S. 557, 129 S.Ct. 2658, 2678 (2009); *Midwest Fence*, 840 F.3d 932, 950 (7th Cir. 2016); *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187, 1191, 2013 WL 1607239

(9th Cir. April 16, 2013); *H.B. Rowe Co.*, 615 F.3d 233, 243-245; *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).

SUMMARY REPORT — Disparity analysis

FHWA-Funded Contracts With and Without DBE Contract Goals

FHWA-funded contracts with DBE contract goals. Figure 20 examines utilization and availability for FHWA-funded contracts with goals.

- Utilization was substantially below for availability for African American-owned firms; and
- Utilization exceeded availability for Asian-Pacific American, Subcontinent Asian American-, Hispanic American-, Native American- and white woman-owned firms.

It appears that the DBE contract goals program has more success encouraging participation of white woman-owned firms and minority-owned firms other than African American-owned businesses.

20. Disparity analysis for ODOT FHWA-funded contracts with goals, FFY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	2.78 %	10.26 %	27
Asian-Pacific American-owned	1.54	0.56	200+
Subcontinent Asian American-owned	1.29	0.14	200+
Hispanic American-owned	3.10	2.02	153
Native American-owned	2.80	2.24	125
Total MBE	11.51 %	15.22 %	76
WBE (white woman-owned)	11.00	9.10	121
Total MBE/WBE	22.50 %	24.32 %	93
Majority-owned	77.50	75.68	102
Total	100.00 %	100.00 %	

Note: Numbers may not add to totals due to rounding.
Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Disparity analysis

FHWA-funded contracts without DBE contract goals. Figure 21 examines utilization and availability for FHWA-funded contracts without goals. This provides an indication of outcomes for minority- and woman-owned companies on FHWA-funded contracts but for application of DBE contract goals under the Federal DBE Program.

For FHWA-funded contracts without goals, utilization was substantially below availability for businesses owned by:

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

For each racial, ethnic and gender group of business owners identified in the federal regulations governing the Federal DBE Program, there were substantial disparities in their participation in FHWA-funded contracts without DBE contract goals.

21. Disparity analysis for ODOT FHWA-funded contracts without goals, FFY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	0.23 %	5.57 %	4
Asian-Pacific American-owned	0.04	1.04	4
Subcontinent Asian American-owned	0.13	0.44	30
Hispanic American-owned	0.69	1.21	57
Native American-owned	0.32	1.36	24
Total MBE	1.42 %	9.62 %	15
WBE (white woman-owned)	6.16	10.48	59
Total MBE/WBE	7.58 %	20.10 %	38
Majority-owned	92.42	79.90	116
Total	100.00 %	100.00 %	

Note: Numbers may not add to totals due to rounding.
Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Disparity analysis

State-Funded Contracts

Keen Independent also compared the participation of minority- and woman-owned companies in ODOT’s state funded contracts, even though they somewhat differ in type of work, size and location from ODOT’s FHWA-funded contracts.

Figure 22 indicates that there were also disparities between the utilization and availability of MBEs and WBEs for ODOT’s state funded contracts.

- Utilization was substantially below the availability benchmark for minority-owned firms as a group; and
- Utilization of white woman-owned companies was substantially below the availability benchmark for WBEs for these contracts.

Appendix D provides additional information for these disparity analyses.

22. Disparity analysis for ODOT state-funded contracts, FFY2018–FFY2020

	Utilization	Availability	Disparity index
MBE (minority-owned)	11.03 %	16.58 %	66
WBE (white woman-owned)	3.97	12.18	33
Total MBE/WBE	15.00 %	28.76 %	52
Majority-owned	85.00	71.24	119
Total	100.00 %	100.00 %	

Source: Keen Independent Research from 2021 availability survey and analysis of ODOT procurements.

SUMMARY REPORT — Further exploration of observed disparities

Appendix D of this report provides additional analyses supporting the disparity analysis results reported here, including results for different subsets of contracts, analysis of bids and proposals on ODOT contracts and statistical significance of results. Statistical significance analyses are summarized here.

Statistical Confidence in Results

Examination of whether chance in sampling could explain any disparities. Keen Independent can reject sampling in the collection of utilization and availability information as an explanation for any disparities.

- Keen Independent attempted to compile a complete “population” of FHWA- and state-funded contracts for the study period above \$10,000 (and subcontracts of any size). There was no sampling of ODOT contracts. This accounts for nearly all of the dollars of ODOT transportation contracts. Using a population of contracts above \$10,000 provides statistical confidence in utilization results.
- Keen Independent’s availability survey attempted to obtain a population of firms within the regional market area available for ODOT contracts. There was no sampling of firms to be included in the survey since Keen Independent obtained the complete list of firms that Dun & Bradstreet identified as doing business within relevant lines of work.

The overall response rate to the survey was very high (43%), the confidence interval for MBE/WBE availability is within +/- 1 percentage point (using a finite population correction factor, as explained in Appendix D).

Monte Carlo simulation to examine chance in contract awards. One can be more confident in making certain interpretations from the disparity results if they are not easily replicated by chance in contract and subcontract awards. For example, if there were only ten ODOT contracts examined in the disparity study, one might be concerned that any resulting disparity might be explained by random chance in the award of those contracts.

Keen Independent performed Monte Carlo simulation to determine whether chance could explain the disparities observed for MBEs when examining ODOT contracts. Results of these analyses were:

- Chance in contract awards could be rejected as an explanation for the observed disparities for MBEs for FHWA-funded contracts without DBE contract goals; and
- Chance in contract awards could be rejected as an explanation for the observed disparities for MBEs and for WBEs for state-funded contracts.

It is important to note that this test may not be necessary to establish statistical significance of results and it may not be appropriate for very small populations of firms.¹⁸ Appendix D provides further discussion.

¹⁸ Even if there were zero utilization of a particular group, Monte Carlo simulation might not reject chance in contract awards as an explanation for that result if there were a small number of firms in that group or a small number of contracts and subcontracts

included in the analysis. Results can also be affected by the size distribution of contracts and subcontracts.

SUMMARY REPORT — Disparity results from other statewide studies

Keen Independent completed a state-wide disparity study for the Oregon Department of Aviation (ODA) in 2021, which included 48 airports receiving funds from the Federal Aviation Administration.

The results of the ODA study are important to the 2022 ODOT Disparity Study.

- Many of the federally funded construction and engineering contracts for airports in Oregon involved similar subindustries as ODOT FHWA-funded contracts, and there was cross-over in the firms performing work on these contracts.
- The geographic market area for airport contracts in that study was nearly identical to the market area for ODOT contracts.
- ODOT typically handled the procurement of ODA contracts.
- Keen Independent employed the same methodology for completing the ODA study as used in the 2022 ODOT Disparity Study.
- ODA and individual airports did not use DBE contract goals during the October 2014 through September 2019 study period.

Minority- and woman-owned companies obtained less than 3 percent of ODA and other airport FAA-funded contracts. There were substantial disparities between MBE utilization and availability and WBE utilization and availability. The full ODA study provides additional information.

23. MBE/WBE utilization and availability for Oregon Department of Aviation and other airport FAA-funded contracts, October 2014–September 2019

	Utilization	Availability	Disparity index
MBE (minority-owned)	1.48 %	5.99 %	25
WBE (white woman-owned)	1.28	9.29	14
Total MBE/WBE	2.76 %	15.28 %	18
Majority-owned	97.24	84.72	115
Total	100.00 %	100.00 %	

Note: Number of contracts/subcontracts analyzed is 1,076.

Source: Keen Independent Research. (2021). *Oregon Statewide DBE Disparity Study*. Oregon Department of Aviation.

SUMMARY REPORT — Information about marketplace conditions — Historical context

Keen Independent summarizes information about the Oregon marketplace in three major parts: historical context, quantitative information and qualitative information.

Analysis of Historical Conditions

In the 2021 Availability and Disparity Study for the Oregon Department of Aviation (ODA) and 2016 Availability and Disparity Study for the Oregon Department of Transportation (ODOT), Keen Independent discussed historic examples of discrimination against African Americans, Hispanic Americans, Asian Americans, Native Americans and women in Oregon that even predated establishment of Oregon as a state in 1859.¹⁹ Some of the discrimination was state-sponsored, including examples of discrimination regarding state transportation infrastructure.²⁰ Such discrimination is not limited to Oregon, and is a part of a larger discussion of race, ethnicity and gender in this country.

The following eight pages provide updates to the discussions in the 2021 ODA Availability and Disparity Study and 2016 ODOT Availability and Disparity Study. It is not intended to provide a comprehensive historical narrative on all groups, or the subsequent efforts of individuals of all backgrounds to right these wrongs.

African Americans. Oregon was the only free state accepted in the Union with an exclusionary clause in the state constitution. The State prohibited African Americans to be in the state, own property and make contracts. The exclusionary laws in Oregon remained intact and continued to deem it illegal for African Americans to live in Oregon even after federal passage of the Fourteenth Amendment.²¹ It was not until voters repealed these laws in 1926 and changes to the state constitution in 2002 were made that the vestiges of racial discrimination were completely removed from Oregon's state constitution.

There is a long history of exclusionary practices aimed at African Americans in Oregon concerning employment, union membership, marriage, education, housing and many other aspects of daily life.^{22, 23, 24}

¹⁹ Keen Independent Research. (2016, June). *Oregon Department of Transportation 2016 Availability and Disparity Study* (Rep.). Retrieved March 21, 2022 from the State of Oregon website: <https://www.oregon.gov/ODOT/Business/OCR/Documents/keen-independent-2016-odot-disparity-study-final-report-06302016.pdf>

²⁰ For example, an 1862 poll tax required that all Chinese, African Americans and Hawaiians in Oregon pay an annual tax of two dollars; if they could not pay this tax, the penalty was to maintain state roads for 50 cents a day. See Bancroft, H. (1888). *History of Oregon, Vol. II 1848-1888*. San Francisco, CA: The History Company, Publishers.

²¹ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved March 21, 2022, from <https://www.portlandoregon.gov/bps/article/412697>

²² Nokes, G. (2015). *Black exclusion laws in Oregon*. Retrieved March 21, 2022, from the Oregon Encyclopedia:

http://oregonencyclopedia.org/articles/exclusion_laws/#.VeYdPPiVhBc

²³ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affecting Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved March 21, 2022, from <https://www.portlandoregon.gov/bps/article/412697>

²⁴ Shaw, P. (2012, November 28). *Why aren't there more black people in Oregon?* Retrieved March 21, 2022, from <http://www.portlandoccupier.org/2012/11/28/why-arent-there-more-black-people-in-oregon>

SUMMARY REPORT — Information about marketplace conditions — Historical context

Examples of anti-Black racism from the past 60 years include redlining in low-income African American communities,²⁵ shutting down speeches from African American leaders,²⁶ unofficial “Sundown Laws” in certain Oregon communities that warned people of color to be out of town by sundown,²⁷ and disparities caused by environmental racism and economic displacement of families in the Portland area.^{28, 29}

In 2020, this systemic racism came into the international spotlight after the killings of unarmed African Americans, including George Floyd and Breonna Taylor. These events sparked national #BlackLivesMatter protests, including in Oregon.³⁰

24. Image of #BlackLivesMatter protests



Source: Wikimedia. (2016). Retrieved March 21, 2022, from https://commons.wikimedia.org/wiki/File:Black_Lives_Matter.jpg

²⁵ Oh, S., & Wang, X. (2018) Urban rail transit provides the necessary access to a metropolitan area: A case study of Portland, Oregon, USA. *Urban Rail Transit* 4(4), 234-248.

²⁶ Harrell, S. (2020, January 2). *Exclusion, housing discrimination and rumored riots: panel explores Oregon's civil rights movement*. The Salem Reporter. Retrieved March 21, 2022, from <https://www.salemreporter.com/posts/1649/exclusion-housing-discrimination-and-rumored-riots-panel-explores-oregons-civil-rights-movement>

²⁷ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affection Oregon's past, present and future*. Portland, OR: Oregon Center for

Education Equality. Retrieved March 21, 2022, from <https://www.portlandoregon.gov/bps/article/412697>

²⁸ Stround, Ellen (1999). Troubled Waters in Ecotopia: Environmental Racism in Portland, Oregon. *Radical History Review* 74, 65-95.

²⁹ Goodling, E., Green, J., & McClintock, N. (2015). Uneven development of the sustainable city: Shifting capital in Portland, Oregon. *Urban Geography* 36(4), 504-527.

³⁰ Gaitan, C. (2021, Jun 9). After a Year of Portland Protests, Activists See No End In Sight. Retrieved March 21, 2022 from <https://www.oregonlive.com/portland/2021/05/after-a-year-of-portland-protests-activists-see-no-end-in-sight.html>

SUMMARY REPORT — Information about marketplace conditions — Historical context

Asian Americans. The 2021 ODA Availability and Disparity Study and 2016 ODOT Availability and Disparity Study also discussed past discrimination against Asian Americans in Oregon. This group includes Chinese Americans, Japanese Americans, individuals from India and other people. This section briefly discusses some of this history.

- **Chinese Americans.** As with African Americans, Oregon enacted anti-Chinese provisions regarding landholding, taxation and suffrage provisions in its constitution.³¹ There was violence against people from China that included massacres.³² Communities were segregated, public education of children was banned and Chinese Americans faced other forms of discrimination in Oregon well into the 1900s.³³ Oregon's Cantonese Chinese population dropped from 10,390 in 1900 to 2,086 in 1940.³⁴

Despite the repeal of the federal Chinese Exclusion Law in 1943, the state's Chinese population remained low due to other discriminatory legislation, such as the 1952 McCarran-Walter Act. As legislation and immigration quotas expanded, the Chinese and other Asian American populations increased in Oregon.³⁵ In 2018, there were 57,000 individuals of Chinese descent in the state, which was the largest group among Asian American-Pacific Islanders.³⁶

- **Japanese Americans.** Japanese workers began coming to Oregon after the United States prohibited immigration of Chinese workers in the late 1800s. By the 1920s, the Oregon state legislature enacted laws that prohibited first-generation Japanese Americans from owning or leasing land and receiving business licenses.³⁷ Groups like the American Legion Native Sons and Daughters of the Golden West perpetuated and solidified anti-Japanese sentiment, which unfortunately helped lead to the Immigration Act of 1924, and eventually justified Japanese American internment during WWII.³⁸

³¹ Chung, S. F. (2011). *In pursuit of gold: Chinese American miners and merchants in the American west*. Chicago, IL: University of Illinois Press; Grantham, A. (2015). *Expulsion of Chinese from Oregon City, 1886*. Retrieved March 21, 2022, from the Oregon Encyclopedia:

http://oregonencyclopedia.org/articles/expulsion_of_chinese_from_oregon_city_1886/#.Ve9nbfIVhBc

³² Lee, D. (2015). *Chinese Americans in Oregon*. Retrieved March 21, 2022, from the Oregon Encyclopedia:

http://oregonencyclopedia.org/articles/chinese_american_in_oregon/#.Veh0CPIVhBd

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ APIA Vote. (2018). *Population Facts: Oregon*. Retrieved June 2, 2021, from <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiZluHK9vnwAhWSOnOKHWffAWYQFjARegQIFxAD&url=https%3A%2F%2Fwww.apiavote.org%2Fsites%2Fdefault%2Ffiles%2FOR-2018.pdf&usg=AOvVaw3L0AqNis32kl3yHUAhTE2C>

³⁷ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affection Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved March 21, 2022, from <https://www.portlandoregon.gov/bps/article/412697>

³⁸ Edited by Lee, J. (2017). *Japanese Americans: The history and culture of a people*. Santa Barbara, CA: ABC-CLIO.

SUMMARY REPORT — Information about marketplace conditions — Historical context

Most Japanese Americans in Oregon at the outbreak of World War II were removed to out-of-state internment camps such as Tule Lake in northern California.³⁹ After the war, many non-minority residents campaigned to discourage Japanese Americans' return. Most did return to Oregon, but often came back to vandalized homes, boycotts of their businesses, or loss of their property altogether.^{40, 41} Federal reparations were provided to interned Japanese in 1988 after the passing of the Civil Liberties Act.⁴²

- **People from India.** Oregon saw immigration of men from India in the 1890s and early 1900s who were attracted to jobs in the lumber and railroad industries. There was substantial violence against Indians by those who believed they were unfairly competing for jobs. Waves of violence against East Indians extended across the Pacific Northwest, including a 1907 killing in Boring and attacks in 1910 against Indians in the St. Johns neighborhood of Portland.^{43, 44}

The federal Immigration Act in 1917 outlawed immigration from India along with many other Asian countries. The Oregon constitution also prohibited Indians from becoming citizens or voting.^{45, 46}

³⁹ Caragozian, J. S. & Warner, D. E. (2019). *When Japanese Americans were pressured to renounce their U.S. citizenship*. California Supreme Court Historical Society Review. Retrieved from <https://www.cschs.org/wp-content/uploads/2019/12/2019-CSCHS-Review-Fall.pdf#page=2>

⁴⁰ Rector, E. (2010, May 16). *Looking back in order to move forward: An often untold history affection Oregon's past, present and future*. Portland, OR: Oregon Center for Education Equality. Retrieved March 21, 2022, from <https://www.portlandoregon.gov/bps/article/412697>

⁴¹ Collisson, C. (2015). *Japanese American wartime incarceration in Oregon*. Retrieved March 21, 2022, from the Oregon Encyclopedia: http://oregonencyclopedia.org/articles/japanese_internment/#.VeYxcPIVhBc

⁴² Portland Chapter of the Japanese American Citizens League. (n.d.). *About*. Retrieved June 2, 2021, from <https://www.pdxjacl.org/about/>

⁴³ Koritala, S. *A historical perspective of Americans of Asian Indian origin 1790-1997*. Retrieved March 21, 2022, from

http://www.infinityfoundation.com/mandala/h_es/h_es_korit_histical.htm

⁴⁴ Ogden, J. (2016). *East Indians of Oregon and the Ghadar Party*. Retrieved March 21, 2022, from the Oregon Encyclopedia:

http://www.oregonencyclopedia.org/articles/east_indians_of_oregon_and_the_ghadar_party/#.VoqrQvZljcs

⁴⁵ Koritala, S. *A historical perspective of Americans of Asian Indian origin 1790-1997*. Retrieved March 21, 2022, from

http://www.infinityfoundation.com/mandala/h_es/h_es_korit_histical.htm

⁴⁶ Ogden, J. (2016). *East Indians of Oregon and the Ghadar Party*. Retrieved January 4, 2016, from

http://www.oregonencyclopedia.org/articles/east_indians_of_oregon_and_the_ghadar_party/#.VoqrQvZljcs

SUMMARY REPORT — Information about marketplace conditions — Historical context

In 2020, the COVID-19 pandemic in tandem with political and economic competition with China contributed to a rise in anti-Asian sentiment. Nationally over, 10,900 hate incidents against Asian Americans were recorded by Stop AAPI Hate from March 2020 to December 2021. These incidents include verbal harassment, physical assault and civil rights violations (e.g., workplace discrimination, housing discrimination and refusal of service). One-hundred and thirty-one of these crimes occurred in Oregon.⁴⁷

Additionally, 99 reports by Asian Americans were filed with the Oregon Department of Justice regarding bias and discrimination from January 2020 to March 2021.⁴⁸

25. Stop Asian Hate image



Source: Wikimedia. (2021). Retrieved March 21, 2022, from https://commons.wikimedia.org/wiki/File:More_protesters_holding_signs_at_Anti-Asian_Hate_Rally_in_Columbia_MD.jpg

⁴⁷ Yellow Horse, A, Jeung, R & Matriano, R. (2022, March). *Stop AAPI Hate National Report*. Retrieved March 21, 2022, from <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>

⁴⁸ Hamada, J & Holt, K. (2021, March 17). *Opinion: A call to community amid uptick in anti-Asian crime and harassment*. The Oregonian. Retrieved May 28, 2021, from <https://www.oregonlive.com/opinion/2021/03/opinion-a-call-to-community-amid-uptick-in-anti-asian-crime-and-harassment.html>

SUMMARY REPORT — Information about marketplace conditions — Historical context

Latino Americans. Due to the lack of a workforce, industries across the United States encouraged Mexican workers to immigrate during World War I, resulting in 1 million Mexican nationals entering the United States from 1910 to 1920.⁴⁹ Oregon’s railroad and agricultural industries benefited from these workers.⁵⁰ By 1930, there were 1,568 residents of Mexican descent in the state.⁵¹ However, U.S. policies changed during the Great Depression, and many Mexican nationals and Mexican American citizens were deported. Because of “whites-only” employment policies and other discrimination during the Great Depression, the only jobs available to many Latinos was “stoop labor,” hard agricultural work.

Despite these hardships, the Latino population in Oregon continued to grow. By the 1980s, 2.5 percent of the state population identified as Latino, a number that has continued to increase. Currently, there are five cities in the state with majority Latino populations (i.e., Gervais, Boardman, Nyssa, Woodburn and Cornelius). The 2019 Census estimates found that Latinos comprise roughly 13.4 percent of the state population.⁵² Despite this growth, Latinos have continued to face bias and discrimination. For example, in the 1990s, legislators attempted to pass laws that denied rights to undocumented immigrants from Mexico, as well as an English-only law that unfairly disadvantaged those who lack English language skills.⁵³

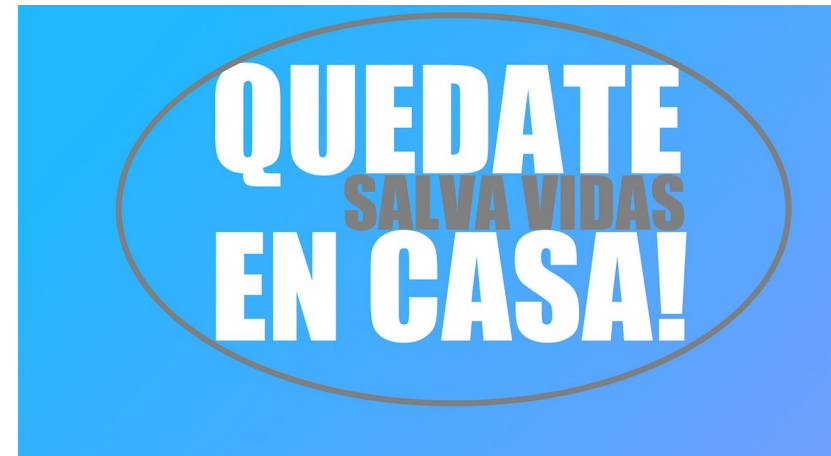
⁴⁹ Garcia, J. (2021). *Latinos in Oregon*. Retrieved June 2, 2021, from https://www.oregonencyclopedia.org/articles/hispanics_in_oregon/#.YLfg9aFIDmE

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² United States Census Bureau. (2021). “Quick Facts: Oregon; Salem City, Oregon.” Retrieved June 16, 2021, from <https://www.census.gov/quickfacts/fact/table/OR,salemcityoregon/PST045219>

26. COVID-19 sign in Spanish



Source: Pixabay. (2021). Retrieved March 21, 2022, from <https://pixabay.com/illustrations/quedate-en-casa-5474596/>

The Latino American community has been particularly impacted by the COVID-19 virus.⁵⁴ There has been a push across most states to encourage Latino Americans to receive vaccinations and boosters to decrease these elevated infection and mortality rates.

⁵³ Garcia, J. (2021). *Latinos in Oregon*. Retrieved June 2, 2021, from https://www.oregonencyclopedia.org/articles/hispanics_in_oregon/#.YLfg9aFIDmE

⁵⁴ Despres, C. (2022, March). “Update: Coronavirus Case Rates and Death Rates for Latinos in the United States.” Retrieved March 21, 2022, from <https://salud-america.org/coronavirus-case-rates-and-death-rates-for-latinos-in-the-united-states/>

SUMMARY REPORT — Information about marketplace conditions — Historical context

Native Americans. The nation as a whole and Oregon have a history marked by the killing and dislocation of indigenous peoples. Federal policy against tribal self-determination initiated after World War II has had a particular impact on the state, where a total of 62 tribes and bands were “terminated,” more than one-half of the total terminated tribes in the country. Termination, which ended the protective federal trust status of indigenous people, has had severe negative effects on indigenous peoples in Oregon.^{55, 56} Tribal land and resources were sold at minimal rates, particularly those with timberlands; tribes lost sovereignty and federal recognition; individuals were forced to assimilate into “mainstream” white culture; and laws prohibited enrollment in tribes, leading to a drop in enrolled tribal populations.⁵⁷

As of 2019, 1.8 percent of the state’s population identified as American Indian and/or Alaska Native, roughly 76,000 people.

Like Latino Americans, Native Americans have been disproportionately impacted by COVID-19. For example, Native Americans in Oregon entered the emergency department due to symptoms of the virus at a rate of 280 per 10,000, compared to a rate of 213 per 10,000 for other people.⁵⁸

Women. Women, too, have been discriminated against since Oregon’s founding. State laws and practices prohibited women from owning property and being employed in certain professions. While the State granted women right to vote in 1912, seven years before the 19th Amendment was passed by U.S. Congress, these provisions only applied to white women and excluded first-generation immigrant women from Asia and Native American women who were not married to white men from voting.⁵⁹

Despite an early history of measured equality in the realm of voting, other forms of state sponsored discrimination persisted. For example, in 1956, the Oregon Supreme Court upheld law that regulated gendered participation in certain occupations and events.⁶⁰ And, before federal legislation in the 1970s, it was common for women in Oregon to face discrimination when attempting to obtain housing and loans.⁶¹ Legislatively, equal rights among the genders was not finalized until 2014 when the Oregon Equal Rights for Women Initiative was passed.⁶²

⁵⁵ Quigley, K. *Introduction to Oregon’s Indian Tribes*. Retrieved January 2, 2016, from <http://bluebook.state.or.us/national/tribal/tribalintro.htm>

⁵⁶ Fixico, D. (2016). *Termination and Restoration in Oregon*. Retrieved January 5, 2016, from http://oregonencyclopedia.org/articles/termination_and_restoration/#.VovhNPZljcs

⁵⁷ Ibid.

⁵⁸ NPAIHB. (2022, March 7). “Oregon State Summary.” Retrieved March 21, 2022, from <https://www.npaihb.org/covid-19-data-dashboard/>

⁵⁹ Jensen, K. (2021, Jan. 20). *Woman Suffrage in Oregon*. Retrieved June 2, 2021, from https://www.oregonencyclopedia.org/articles/woman_suffrage_in_oregon/#.YlFJSqFlBaQ

⁶⁰ *State v. Hunter*, 208 Or. 282, 300 P.2d 455 (1956).

⁶¹ Fair Housing Council of Oregon. *Sex discrimination*. Retrieved June 15, 2021, from <http://www.fhco.org/discrimination-in-oregon/protected-classes/sex>

⁶² Phillips, E. (2014, Oct. 29). *Sex-Equality Backers Seek Impetus in Oregon Measure*. Retrieved June 2, 2021, from <https://www.wsj.com/articles/sex-equality-backers-seek-impetus-in-oregon-measure-1414626832>

SUMMARY REPORT — Information about marketplace conditions — Historical context

Summary Effects of Historic Discrimination in Oregon

Past societal discrimination has shaped the composition of the Oregon population, affected inter-generational creation of wealth, and established long-lasting stereotypes for certain “outside” groups.

Although it may no longer be codified in state and local laws, instances of discrimination against people of color and women in Oregon continue today based on information from disparity studies and other research conducted in Oregon in recent years. For example, a 2011 and a 2015 Fair Housing Council of Oregon audit found barriers in the housing market for black and Latino renters in Portland.^{63, 64} More recently, analysis of phone calls to a housing discrimination hotline revealed that many callers still face racial discrimination.⁶⁵

The historical information above provides context for Keen Independent’s analysis of the Oregon construction and engineering industries and topics such as access to capital in the state.

⁶³ Hannah-Jones, N. (2011, May 10). Portland housing audit finds discrimination in 64 percent of tests; city has yet to act against landlords. *The Oregonian*.

⁶⁴ Schmidt, B. (2015, April 21). Portland housing audit shows blacks, Latinos face discriminatory barriers. *The Oregonian*.

⁶⁵ Friedman, Gordan R. (2018, Nov. 21) Portland housing audit finds renters still face discrimination. *Oregon Live*. Retrieved March 21, 2022, from <https://www.oregonlive.com/news/2018/11/portland-housing-audit-finds-renters-still-face-discrimination.html>

SUMMARY REPORT — Quantitative information about marketplace conditions

Keen Independent examined U.S. Census Bureau data, results from the availability survey conducted for this study and other data sources on conditions for minority- and woman-owned firms in the local marketplace. As summarized in the next five pages, the combined information indicates that people of color and women face barriers entering study industries as employees and as business owners. Once formed, there is evidence of greater barriers for minority- and woman-owned firms in the marketplace, including when competing for work.

Study appendices provide in-depth quantitative analyses of the following issues for people of color and women in Oregon:

- Entry and advancement in study industries (Appendix E);
- Business ownership (Appendix F);
- Access to capital (Appendix G); and
- Business success (Appendix H).

Entry into Study Industries

People of color were 24 percent of the Oregon workforce between 2015 and 2019 and women accounted for about 47 percent of all workers (data combine the state and Clark County and Skamania County, Washington). Analysis of the workforce in the study industries indicates barriers to employment for some minority groups and for women in certain industries.

- Among construction workers, African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women were underrepresented compared to representation among workers in all other industries. These differences were statistically significant.

In Oregon, representation of people of color in construction trades such as electricians and among construction supervisors was low when compared to representation in the construction industry as a whole.

There were two construction trades examined in which there were no women in the Census Bureau sample data for Oregon.

- After controlling for educational attainment, African Americans, Hispanic Americans, Native Americans and women constituted a smaller portion of the Oregon professional services workforce when compared to representation among workers in all other industries. These differences were all statistically significant.
- All minority groups and women were underrepresented in the Oregon goods industry. Underrepresentation was statistically significant for Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and women.
- In the other services industry, all racial and ethnic minority groups (except for Hispanic Americans) and women represented a smaller portion of workers than would be expected based on representation among workers in all other industries. These differences were statistically significant for African Americans, Asian-Pacific Americans, Subcontinent Asian Americans and women.

Any barriers to entry or advancement in the study industries might affect the relative number of businesses owned by people of color and women in these industries in local area.

SUMMARY REPORT — Quantitative information about marketplace conditions

Business Ownership

Keen Independent examined whether there were differences in business ownership rates for workers in the Oregon construction, professional services, goods and other services industries related to race, ethnicity and gender.

- People of color working in the Oregon construction industry were less likely than non-Hispanic whites to own a business. Similarly, women in the construction industry were less likely than men to be self-employed.

Even after statistically controlling for factors including education, age, family status and homeownership, statistically significant disparities in business ownership rates were still found for African Americans, Hispanic Americans and non-Hispanic white women. These disparities were substantial.

- In the Oregon professional services industry, after controlling for other factors, there was a statistically significant disparity in the business ownership rate for Subcontinent Asian Americans working in the industry (substantial disparity).
- After controlling for personal characteristics including age and education, there was a statistically significant disparity in the rate of business ownership for Asian Americans working in the Oregon goods industry. This disparity was substantial.

But for these disparities, there would be more firms in Oregon owned by:

- African Americans, Hispanic Americans and white women in construction;
- Subcontinent Asian Americans in the professional services industry; and
- Asian Americans in the goods industry.

These results are largely consistent with recent disparity studies in Oregon. A statewide Oregon DBE disparity study (2021) reported lower rates of business ownership in the construction industry for African Americans, Hispanic Americans, Native Americans and women. Minorities and women working in the architecture and engineering industry were also less likely to be business owners.⁶⁶

The 2016 ODOT disparity study also reported lower rates of business ownership in the construction and engineering industries for people of color and women.⁶⁷

Appendix F presents detailed results of the business ownership analyses conducted for this study.

⁶⁶ Keen Independent Research. (2021). *Oregon Statewide DBE Disparity Study*. Oregon Department of Aviation.

⁶⁷ Keen Independent Research. (2016). *2016 Availability and Disparity Study*. Oregon Department of Transportation.

SUMMARY REPORT — Quantitative information about marketplace conditions

Access to Capital

Business start-up and long-term business success depend on access to capital. Discrimination at any link in that chain may produce cascading effects that result in racial and gender disparities in business formation and success.

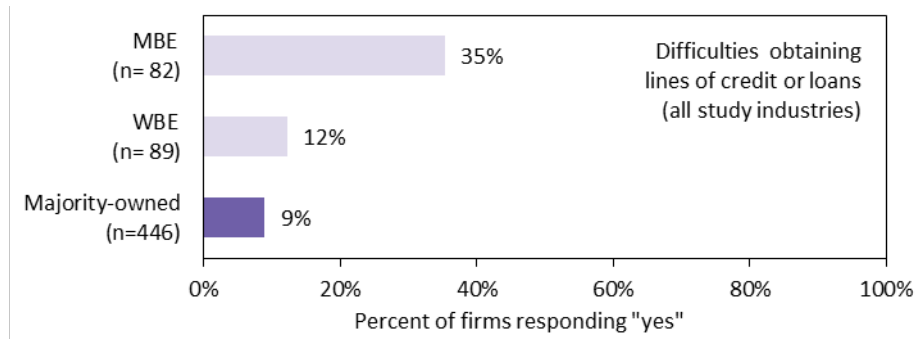
The information presented here indicates that people of color and women continued to face disadvantages in accessing capital that is necessary to start, operate and expand businesses. Appendix G of this report further describes these results.

National results. Capital is required to start companies, so barriers to accessing capital can affect the number of people of color and women who are able to start businesses. In addition, minority and female entrepreneurs start their businesses with less capital (based on national data). Several studies have demonstrated that lower start-up capital adversely affects prospects for those businesses.

Quantitative information about access to capital for businesses available for governmental entity work. Availability survey results for Oregon businesses indicate that minority-owned companies were more likely than other firms to report difficulties obtaining lines of credit or loans. As shown in Figure 27, 35 percent of minority-owned firms and 12 percent of woman-owned firms reported difficulties compared to just 9 percent of majority-owned companies.

Access to bonding is highly related to access to capital. Among construction firms indicating in the availability survey that they had tried to obtain a bond, MBEs and WBEs were more likely to report difficulties obtaining bonding than other firms.

27. Responses to availability survey question concerning loans



Source: Keen Independent Research from 2021 availability survey.

Quantitative information about homeownership and mortgage lending. Wealth created through homeownership can be an important source of funds to start or expand a business. Any discrimination against people of color in home purchases and home mortgages can negatively affect formation, success and growth of firms owned by people of color.

- People of color in Oregon were less likely to own a home compared with non-Hispanic whites. Hispanic Americans and Native Americans also tended to have lower home values.
- There are also disparities in access to home mortgages. High-income minority households applying for conventional home mortgages in Oregon were more likely to have their applications denied than high-income non-Hispanic whites. This may indicate discrimination in mortgage lending and may affect access to capital to start or expand businesses.
- People of color (except Asian Americans) in Oregon were more likely to have subprime loans than non-Hispanic whites. This may be evidence of predatory lending practices affecting people of color in the state.

SUMMARY REPORT — Quantitative information about marketplace conditions

Business Success

Keen Independent explored different types of business outcomes in the Oregon marketplace for minority- and woman-owned firms compared with majority-owned companies. In summary, many different data sources and measures suggested disparities in marketplace outcomes for minority- and woman-owned businesses and evidence of greater barriers for people of color and women to start and operate businesses in Oregon construction, professional services, goods and other services industries. (See Appendix H for detailed results.)

Business closure, expansion and contraction. The study team used a 2010 SBA study of minority business dynamics to examine business closures, expansions and contractions for privately held businesses between 2002 and 2006. Compared with majority-owned firms in Oregon, that study found that:

- Asian American-owned firms were less likely to expand; and
- African American-, Asian American and Hispanic American-owned businesses were more likely to close.

Data regarding the COVID-19 pandemic also indicate that MBEs and WBEs were more likely to close than other firms.

Business revenue and earnings. The study team used data from different sources to analyze business receipts and earnings for businesses owned by people of color and women.

- In general, analysis of U.S. Census Bureau data from the 2017 Annual Business Survey showed lower average receipts for businesses owned by people of color and women in Oregon than businesses owned by non-minorities or men.

- Data from 2015–2019 American Community Survey for Oregon indicated that:
 - Businesses owned by people of color had lower earnings than non-Hispanic white business owners in all study industries combined, with similar results in some individual study industries; and
 - Women business owners had lower earnings than men in each study industry (these differences were also statistically significant).
- Regression analyses using U.S. Census Bureau data for business owner earnings indicated that there were statistically significant negative effects of race and gender on earnings in some study industries, particularly for women.
- Data from availability surveys showed that, across the study industries in Oregon, MBEs and WBEs had lower revenue compared with majority-owned firms.

Bid capacity. From Keen Independent’s availability survey, there was evidence that minority-owned firms had lower bid capacity than majority-owned firms in Oregon study industries. However, there were no statistically significant differences in the bid capacity of MBEs and WBEs after accounting for the types of work firms perform and length of time in business.

SUMMARY REPORT — Quantitative information about marketplace conditions

Difficulties with prequalification, insurance and project size. The availability survey included other yes/no questions about whether the business experienced barriers in the Oregon marketplace. Results indicate that MBEs and WBEs are more likely than majority-owned companies to be affected by certain barriers to doing business.

For example, relatively more MBEs and WBEs than majority-owned firms reported that they difficulties related to:

- Being prequalified;
- Insurance requirements on contracts; and
- Large project size.

For additional information about the types of difficulties companies experience in the local marketplace, see Appendix H for quantitative results and Appendix J for qualitative information.

Difficulties learning about bid opportunities. Availability survey results also indicate greater barriers for MBEs and for WBEs in learning about work. Relatively more MBEs and WBEs than majority-owned firms reported difficulties learning about bid opportunities with:

- Public entities in Oregon;
- Private sector clients; and
- Prime contractors.

Bid restrictions. Minority- and white woman-owned businesses were more likely than majority-owned firms to report difficulties related to:

- Brand name specifications;
- Obtaining supply or distributor relationships; and
- Competitive disadvantages due to pricing from suppliers.

Payment and approvals. Responses to questions concerning difficulty obtaining payment and approvals indicated that, compared to majority-owned firms, MBE/WBE firms were more likely to indicate difficulties related to receiving payment from public agencies and from prime contractors.

SUMMARY REPORT — Qualitative information about marketplace conditions

Introduction and Methodology

Keen Independent collected qualitative information about entry and advancement in the ODOT study industries through surveys, interviews, public meetings and other means. The study team also provided opportunity for public comments via mail and the designated telephone hotline as well as a study website and email address.

Through these methods, the study team obtained comments from representatives of more than 315 businesses, trade organizations and other groups over the course of the study.

In addition, Keen Independent reviewed qualitative information reported in other disparity studies in Oregon.

Comments were received from African American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, Native American and white business owners including businesses owned by men and by women.

Appendix J presents qualitative information in detail. Examples of topics discussed in Appendix J are listed below.

- Starting a business;
- Dynamic firm size, types of work and markets served;
- Current conditions in the Oregon marketplace;
- Keys to business success;
- Working with ODOT;
- Whether there is a level playing field;
- Challenges not faced by other businesses;
- Access to capital;
- Bonding and insurance;
- Issues with prompt payment;
- Unfair treatment in bidding;
- Stereotyping and double standards;
- “Good ol’ boy” and other closed networks;
- Business assistance programs and certifications; and
- Other insights and recommendations for ODOT.

The following seven pages summarize some of these results. (See Appendix J for a synopsis of examples of comments gathered as part of this disparity study.)

SUMMARY REPORT — Qualitative information about marketplace conditions

Overview of Starting and Succeeding in Business

Most current business owners interviewed described struggles in starting a business. Some people of color and women who provided comments appeared to have some additional challenges.

Working in the industry before starting a business. Many business owners worked in the industry or a related industry before starting their firms.

I started from scratch. It was in the industry that I have years of experience in and had an opportunity to do work and take on my own projects and give myself more bandwidth of what I can do.

I-39. Hispanic American male owner of a DBE professional services firm

Challenges to starting, sustaining and growing a business. Most business owners and representatives reported facing challenges at start-up and beyond.

I had to figure out how to run a business. I didn't know what I was doing.

I-20. African American male owner of a DBE specialty services firm

When I started my business, I didn't realize that when you have a contract, it is possible that you don't get paid for some time I suffered initially quite significantly. I tried to go out on my own and then had to go back.

I-58. Hispanic American male owner of an MBE specialty services firm

[I] struggled with finding clients [and] I didn't know what my market was.

I-21. White female owner of a DBE/WBE/ESB professional services firm

[I was] literally by myself [with] a laptop and a business card Having to start [a business] is a challenge ... I just did a lot of networking, joining chambers [of commerce] ... to network to grow my business.

I-16. Hispanic American male owner of an MBE specialty services firm

There's all sorts of challenges around market penetration.

I-61. African American male owner of a DBE/MBE/ESB professional services firm

Access to capital is a challenge for all businesses.

TO-13. African American female representative of a micro-business assistance provider

SUMMARY REPORT — Qualitative information about marketplace conditions

Current Conditions in the Oregon Marketplace

Business owners and representatives reported on the economic conditions in the local marketplace.

Impact of Covid-19 pandemic. Akin to the effects of the Great Recession on the industry described in the 2016 ODOT Disparity Study and 2021 ODA Disparity Study, COVID-19 has had a significant impact on conditions in Oregon, as well as throughout the nation.

Many business owners and trade association representatives reported unfavorable economic conditions due to the COVID-19 pandemic.

When the pandemic first hit, I thought my business was over ... because everything stopped.

I-16. Hispanic American male owner of an MBE specialty services firm

Supply chain issues. Several participants noted supply chain issues that impacted operations, and/or have led to an increase in materials cost.

We have seen a lot more effect in the supply chain. That has been a big deal. The price on steel and availability of materials was reduced for over a year. The business is slowing down a bit

I-41. White female owner of a professional services firm

Staffing constraints. Others reported trouble locating qualified employees.

[There is a] shortage of people, shortage of everything.

I-63. White male representative of a majority-owned construction related firm

Paycheck Protection Program (PPP) loans. A few interviewees commented on receiving government assisted PPE loans.

Keys to Business Success

When business owners were asked to report the keys to business success, relationship building and recruiting and sustaining a qualified workforce rose to the top.

Creating and maintaining customer relationships. Many interviewees described the importance of relationships with customers and others as a key factor for success. Some also cited their reputation as an integral element.

So much of it is who you know 'Oh, you're [so and so's son]! Come out and do some work for me.'

I-50. White male owner of a construction related firm

Importance of employees to business success. Many participants noted that building and retaining a skilled team of employees was a key factor for success.

Having work is the first part [of success for the business]. Number two is having good employees.

I-44. White male owner of a specialty services firm

Access to capital, bonding and insurance. Many expressed that success was dependent on access to capital, bonding and insurance. For some firms, limited access to capital was an on-going barrier.

We had [no start-up capital]. Started from scratch with nothing.

I-36. Asian-Pacific American male owner of a professional services firm

Trying to build a client base and have cashflow are challenges that have made it unclear if her firm would be successful.

I-19. African American female owner of a DBE professional services firm

SUMMARY REPORT — Qualitative information about marketplace conditions

Experiences with ODOT

Working with ODOT was easy for some firms, and more difficult for others.

Pursuit of opportunities with ODOT. Although the pursuit of opportunities with ODOT was understood by some firms, it was more challenging for others.

Most [jobs] are published. There is Bid Locker and OregonBuys. Between those two, I get most of the information. I am not getting any emails, though.

I-4. African American male owner of a DBE construction-related firm

The interviewee noted that finding out about ODOT opportunities requires a business to be assertive, tech-savvy and attend meetings for information and networking. Though he has been to many events, *[I] haven't seemed to find the right [door] when it comes to ODOT.*

I-16. Hispanic American male owner of an MBE specialty services firm

Experiences working with ODOT. Business owners and representatives reported mixed experiences when working with ODOT.

It's been easy to work with [ODOT]. They are in constant communication and do what it takes to get the work done. They make sure you get paid on time.

I-4. African American male owner of a DBE construction-related firm

The interviewee said that when an ODOT job is awarded it does not necessarily mean that the award results in notice to proceed.

AS-18. African American male representative of a construction related firm

Contractor/subcontractor relationships. Business owners and representatives were asked to comment on their experiences with prime contractor-subcontractor relationships.

Although some subcontractors had positive experiences, many more reported challenges when working with primes.

[There are] historical belief systems [among] primes: 'How do I know [subcontractors are] capable?'

TO-3. White female representative of a trade organization

At times it can feel like [clients and primes] don't value you much.

I-37. White female owner of a WBE construction-related firm

When there is no hard goal, and contractors are just looking to show a good faith effort, they ask [subcontractors] for quotes with no intention of using the DBE from which they requested a quote. As a small DBE sub, this does not help us at all.

PM1-13. Asian-Pacific American female owner of a firm

Generally, after [the prime] give[s] us the opportunity, they find a reason to stall a job then remove the firm from the job.

I-55. White female representative of a construction-related firm

In the field, it creates resentment. The bigger companies have their practices, but it doesn't always pan out [for subcontractors].

I-4. African American male owner of a DBE construction-related firm

SUMMARY REPORT — Qualitative information about marketplace conditions

Reports that the Playing Field is not Level for MBE/WBEs

Many individuals indicated that there was not a level playing field for business owners of color and women business owners.

Access to capital. Firm owners and others indicated that access to capital is particularly challenging for business owners who are people of color and women.

Lack of access to capital [is an issue]. Women and people of color do not have [the] luck of getting venture financing. Less than 5 percent of capital goes to women, and less than 1 percent goes to people of color out of investment capital. There is a lack of access to the right side of the capital. They also traditionally can't get access to a bank loan. We are talking about major barriers and hurdles.

TO-12. White female representative of a business assistance provider

Bonding and insurance. A firm's bonding and/or insurance capacity greatly impacts the size of contracts the firm can bid on.

For the work that I am going into, the only thing that sits in the back of my mind is bonding I don't know want any special treatment. I just want opportunities is all.

I-7. Native American male owner of a construction-related firm

The cost of the insurance, it puts me in a place where you have to maintain those residual costs.

I-4. African American male owner of a DBE construction-related firm

Issues with prompt payment. Slow payment can be especially damaging for firms that do not have the same access to capital as other companies.

Currently, we are going to turn down public work ... cannot bankroll them. [It is not feasible].

I-55. White female representative of a construction-related firm

We were in a situation where these big firms owed us so much money, we were seriously considering not working for these [local agencies] because we were going to go under.

I-28. White male owner of a construction-related firm

Unfair treatment in bidding. Some participants reported encountering bid shopping and other unfair treatment in bidding in the Oregon marketplace. Few reported getting feedback on bids they submitted to public agencies and primes.

There is a lot of bid 'fishing' that goes on. That happens a lot. We have had a general contractor inform us that is happening. That is why it becomes hard to win.

I-60. African American male owner of a DBE/MBE construction related firm

The only feedback we get is being told to go look at the company who won. I would like to receive feedback I would like some way to find out why we are getting these ratings in the RFP's. [Like] a feedback meeting. Even if the vendor is silent, I would happily get on a 'Zoom' call where I am muted just to listen to why we got the rating we got.

I-18. White male owner of a professional services firm

SUMMARY REPORT — Qualitative information about marketplace conditions

Stereotyping and double standards. Some business owners faced racial- and gender-based stereotyping.

The interviewee reported double-standards when working on all-male teams. *There was a lot of second-guessing of our analyses.*

I-9. White female owner of a professional services firm

There is an opinion that if I get a contract [as] an MBE, that I don't know what I am doing ... the toughest thing so far

I-8. African American female owner of an ESB and MBE construction-related firm

“Good ol’ boy” network and other closed networks. Some business owners and representatives said that closed networks persist in the Oregon marketplace.

It is relationship based Oregon runs on a ‘good ol’ boy’ system.

I-59. White male owner of a professional services firm

I feel always like it's this ‘good ol’ boy’ network — they're going through this process because they have to, but they already know who they're going to give [the contract] to.

I-16. Hispanic American male owner of an MBE specialty services firm

The construction industry happens to be more of a ‘good ol’ boys’ club. There are connections, there is loyalty.

I-56. Subcontinent Asian American female owner of a WBE/MBE/DBE construction-related firm

A few business owners reported benefitting from being part of closed networks.

All my peers are southern Oregon white guys.

I-34. White male owner of a professional services firm

The interviewee reported that her firm benefits from using personal connections and networks, but added *if you are outside that network, it can be hard to bust in.*

I-9. White female owner of a professional services firm

Some reported that, although still operating in the marketplace, the “good ol’ boys” club has weakened over time.

I feel like we're in a transitional phase in the industry There's a lot of people retiring that are used to doing business one way Things have changed so much in the [time] that I've been working, and I see a lot of change coming

I-31. White female representative of a majority-owned firm

... as a nation we are getting a little better around the awareness of that. When [closed networks do] happen, I think equally the customers and the primes are very, very sensitive. Agencies are [too]. So, as hard as it is, we are in a lot better place I think And the issues will always remain there, but I think they are getting better.

I-56. Subcontinent Asian American female owner of a WBE/MBE/DBE construction-related firm

SUMMARY REPORT — Qualitative information about marketplace conditions

Insights About Assistance Programs and the DBE Program

Although awareness of business assistance programs was limited, a number of business owners and representatives commented on certification programs.

Available assistance. A number of business owners and representatives were aware of business assistance programs. For some, such programs, including the DBE Program, were useful and provided value to their firm.

The DBE Program ... is an amazing program for small businesses. It needs to be backed up by the right organizations who are really looking at it, monitoring it, executing it, supporting small businesses.

I-56. Subcontinent Asian American female owner of a WBE/MBE/DBE construction-related firm

However, more interviewees noted that they were unaware of or did not take advantage of any business assistance programs.

When I've talked with [my local] business and development person, they're very sweet, but [they say], 'We just don't really have any of those [assistance programs]' And then when I look at other start-up [assistance], usually they're private entities, they're not government entity tech programs, and either they're super local, [for example], you have to live ... in Portland, or they're competition I haven't really seen anything else besides that related to a woman-owned business.

I-46. White female owner of a DBE professional services firm

Certification programs. Experiences with certification were positive for some business owners.

When there are RFP issues or intentions are directly tied to percentages in a contract, it drives companies like ours to pull in partners. It adds challenges for us, but in states where it is actively laid out, you get prime vendors more engaged.

I-27. White male representative from a construction-related firm

Some other business owners found the process of becoming certified difficult with limited or no reward.

The word in minority communities [about the certification process] is, 'Don't waste your time' They don't think it will help.

I-19. African American female owner of a DBE professional services firm

Amount of paperwork and documents required took us two-and-a-half weeks. They found a discrepancy ... didn't ... reach out ... we got an automatic denial ... no dollar in my bank ... from being ... certified.

I-3. White male representative of a Native American female-owned professional services firm

It was like going to college [and getting a degree] I can say I have it, but I don't use it It was a lot of work.

I-21. White female owner of a DBE, WBE and ESB professional services firm

Finding and working with companies that take part in working with certified companies has been a problem.

AS-35. African American male owner of a professional services firm

SUMMARY REPORT — Qualitative information about marketplace conditions

Other Interviewee Insights and Suggestions for ODOT

Some commented on how ODOT may improve the procurement process and increase participation among minority- and woman-owned firms and other small businesses.

RFPs and award of contracts. Some business owners encouraged more transparency and to level the playing field for bidders.

Have the process [be] as transparent as possible and give information to people on how to be eligible [to work].

I-49. White female owner of a WBE professional services firm

[ODOT] needs to treat everyone the same and have a level field.

I-20. African American male owner of a DBE specialty services firm

The questions for solicitation lend themselves to firms that have been in business for a long time or firms with many people The challenge is [also] the time involved to complete the RFP.

I-12. Hispanic American female owner of a DBE professional services firm

I would like to see the RFP be set more to the average companies and not just firms with specialties in public work.

I-3. White male representative of a Native American female-owned professional services firm

Equal treatment when [minority-owned firms] are awarded work. That we [are given] the same opportunities and experiences as majority firms.

I-60. African American male owner of a DBE/MBE construction-related firm

Unbundling. A number of business owners indicated that procurements of smaller sizes would benefit minority- and woman-owned firms and other small businesses.

Some of these RFPs ... are written to scale [small firms] out when actually in fact they want your expertise, and they should have been designed to put you first and everybody else second.

I-16. Hispanic American male owner of an MBE specialty services firm

Take the bigger contracts and break them down into smaller contracts for smaller firms to pick up.

I-4. African American male owner of a DBE construction-related firm

Relationship building. Encouraging relationship building was a common suggestion for ODOT.

What might be helpful is having a good resource [list of] firms who are historically disadvantaged that have worked with ODOT, so firms like us can find them and partner with them.

I-27. White male representative of a construction-related firm

It would be helpful if more pools could be established, so that when ODOT has contract work, they can connect easily with small businesses to get that work done.

AS-68. White female owner of a professional services firm

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Keen Independent examined quantitative and qualitative results for the Oregon marketplace and ODOT transportation contracts for MBEs and WBEs as a whole and for specific groups. The study team also assessed race- and gender-neutral responses to any barriers to participation of minority- and woman-owned businesses that ODOT might employ that go beyond its current efforts.

Both sets of information are important when ODOT determines whether it can meet its future goal for DBE participation solely through race- and gender-neutral means, and if not, the specific DBE groups that would be eligible to participate in any DBE contract goals program.

The following is a short summary; ODOT should review all of the results in the report and other information it has when making these determinations.

Summary for Minority- and Woman-Owned Firms as a Whole

Keen Independent's comparisons of utilization and availability for ODOT transportation contracts found:

- Substantial disparities in the utilization of MBEs and utilization of WBEs in FHWA-funded contracts without DBE contract goals;
- Substantial disparities in the utilization of MBEs (overall) and the utilization of WBEs in ODOT's state-funded contracts; and
- There were also substantial disparities in the utilization of MBEs and WBEs for airports in Oregon reported in the 2021 Oregon Department of Aviation disparity study.

Examples of quantitative information for people of color and women overall for the Oregon marketplace includes the following.

- Availability survey results for Oregon businesses indicate that minority-owned companies were more likely than other firms to report difficulties obtaining lines of credit or loans compared to majority-owned firms.
- Among construction firms indicating in the availability survey that they had tried to obtain a bond, MBEs and WBEs were more likely to report difficulties obtaining bonding than majority-owned firms.
- Home equity is an important source of funds for business start-up and growth. Fewer people of color in Oregon own homes compared with non-Hispanic whites.
- High-income minority households applying for conventional home mortgages in Oregon were more likely to have their applications denied than high-income non-Hispanic whites.
- People of color (except Asian Americans) in Oregon were more likely to have subprime loans than non-Hispanic whites. This may be evidence of predatory lending practices affecting people of color in the region.
- Data regarding the COVID-19 pandemic indicate that MBEs and WBEs were more likely to close than other firms.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

- In general, analysis of U.S. Census Bureau data from the 2017 Annual Business Survey showed lower average receipts for businesses owned by people of color and women in Oregon than businesses owned by non-minorities or men. National data indicated that these general patterns persist across the study industries.
- Data from 2015–2019 American Community Survey for Oregon indicated that:
 - Businesses owned by people of color had lower earnings than non-Hispanic white business owners in all study industries combined, with similar results in some individual study industries; and
 - Women business owners had lower earnings than men in each study industry (these differences were also statistically significant).

Data from availability surveys showed that, across the study industries in Oregon, MBEs and WBEs had lower revenue compared with majority-owned firms.

- Regression analyses using U.S. Census Bureau data for business owner earnings indicated that there were statistically significant negative effects of race and gender on earnings in some study industries, particularly for women.
- Answers to availability survey questions concerning marketplace barriers indicated that relatively more MBEs and WBEs than majority-owned firms face difficulties related to:
 - Being prequalified;
 - Insurance requirements; and
 - Large project size.

- Availability survey results also indicate greater barriers for MBEs and for WBEs in learning about work. Relatively more MBEs and WBEs than majority-owned firms reported difficulties learning about bid opportunities with public entities in Oregon, private sector clients and with prime contractors.
- Minority- and white woman-owned businesses were more likely than majority-owned firms to report difficulties related to brand name specifications, obtaining supply or distributor relationships and competitive disadvantages due to pricing from suppliers.
- Compared to majority-owned firms, minority- and woman-owned firms were more likely to indicate difficulties related to receiving payment from public entities in Oregon, prime contractors and other customers.
- Minority-owned businesses were more likely to indicate difficulties obtaining approval from inspectors or prime contractors than majority-owned firms.

There is also considerable qualitative information in this report and past disparity studies in Oregon that indicate race and gender discrimination against people of color and women and affecting minority- and woman-owned companies.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Additional Information for Specific Groups

Keen Independent also examined results by minority group.

African American-owned firms. There were substantial disparities in the utilization of African American-owned companies in ODOT FHWA-funded contracts (in total, with DBE contract goals and without DBE contract goals) and in state-funded contracts. (Appendix D provides detailed results for state-funded contracts.)

Additional evidence regarding disparities for African Americans and African American-owned companies in the Oregon marketplace included the following.

- Statistically significant disparities in the representation of African Americans working in the Oregon construction, professional services and other services industries.
- After controlling for other factors in business ownership regression analyses, statistically significant, substantial disparities in business ownership rates for African Americans working in the Oregon construction industry. This suggests that the number of African American-owned construction firms in Oregon is lower than there would be if there were a level playing field.
- Disparities in the denial rates of home mortgages to high-income African American households in Oregon. (This occurred for other groups as well, as discussed in the following pages.) It may indicate discrimination in mortgage lending and may affect access to capital for people of color to start and expand businesses.

- Based on 2002 to 2006 analyses, African American-owned businesses in Oregon were more likely to close than white-owned businesses (consistent with more recent data).

Asian-Pacific American-owned firms. There were substantial disparities in the utilization of Asian-Pacific American-owned businesses in FHWA-funded contracts without DBE contract goals. Utilization was in line with availability of Asian-Pacific American-owned firms for state-funded contracts, as discussed in Appendix D.

Additional quantitative information from the Oregon marketplace includes the following. (Note that some data sources combined results for all Asian Americans or Asian American-owned companies.)

- Statistically significant disparities in the representation of Asian-Pacific Americans working in the Oregon construction, goods and other services industries.
- After controlling for other factors, statistically significant, substantial disparity in business ownership rates for Asian-Pacific Americans working in the Oregon goods industry. This indicates that the number of Asian-Pacific American-owned goods firms in Oregon is lower than there would be if there were a level playing field.
- Disparities in the denial rates of home mortgages to high-income Asian American households in Oregon.
- Based on 2002 to 2006 analyses, Asian American-owned businesses in Oregon were less likely to expand and more likely to close than white-owned businesses.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Subcontinent Asian American-owned firms. There was a substantial disparity in the utilization of Subcontinent American-owned businesses in FHWA-funded contracts without DBE contract goals. Utilization exceeded availability of Subcontinent American-owned firms for state-funded contracts.

Results for Subcontinent Asian Americans from the marketplace analyses included the following.

- Statistically significant disparities in the representation of Subcontinent Asian Americans working in the Oregon construction, goods and other services industries.
- After controlling for other factors, a statistically significant, substantial disparity in the business ownership rate for Subcontinent Asian Americans working in the Oregon professional services industry. (The number of Subcontinent Asian American-owned professional services firms in Oregon is lower than there would be if there were a level playing field.)
- Disparities in the denial rates of home mortgages to high-income Asian American households in Oregon.
- Based on 2002 to 2006 analyses, Asian American-owned businesses in Oregon were less likely to expand and more likely to close than white-owned businesses.

Hispanic American-owned firms. There was a substantial disparity in the utilization of Hispanic American-owned businesses in FHWA-funded contracts without DBE contract goals. Utilization exceeded availability of Hispanic American-owned firms for state-funded contracts.

Additional information for Hispanic Americans and Hispanic American-owned businesses included the following.

- Statistically significant disparities in the representation of Hispanic Americans working in the Oregon professional services and goods industries.
- After controlling for other factors, statistically significant, substantial disparity in the business ownership rate for Hispanic Americans working in the Oregon construction industry (suggesting a depressed number of Hispanic American-owned construction firms in Oregon).
- Disparities in the denial rates of home mortgages to high-income Hispanic American households in Oregon.
- Based on 2002 to 2006 analyses, Hispanic American-owned businesses in Oregon were more likely to close than white-owned businesses.

Native American-owned firms. There was a substantial disparity in the utilization of Native American-owned businesses in FHWA-funded contracts without DBE contract goals. Utilization exceeded availability of Native American-owned firms for state-funded contracts.

- When examining marketplace conditions for Native Americans in Oregon, Keen Independent identified statistically significant disparities in the representation of Native Americans working in the Oregon professional services industry.
- Other data sets for Native Americans from U.S. Census Bureau data and other sources for the Oregon marketplace often did not have large enough samples to analyze results specific to Native Americans or Native American-owned businesses. Sometimes results were grouped with other people of color. In general, those data showed disparities compared with non-Hispanic whites.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Woman-owned firms. Much of the evidence regarding disparities for women and woman-owned companies is summarized in the general summary of conclusions for MBEs and for WBEs.

Examples of additional information include:

- Statistically significant disparities in the representation of women working in the Oregon construction, professional services, goods and other services industries. There were also quantitative barriers to advancement for women in construction, and some construction occupations where there were no women in the U.S. Census Bureau sample data for those disciplines.
- After controlling for other factors in business ownership regression analyses, statistically significant, substantial disparities in business ownership rates for women working in the Oregon construction industry. This suggests that the number of white woman-owned construction firms in Oregon is lower than there would be if there were a level playing field.

Summary of group-specific analyses. Based on this information, there is some evidence of disparities related to participation in ODOT transportation contracts and in the Oregon marketplace for each minority group examined in this study, as well as for women and woman-owned businesses.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Additional Neutral Remedies

In the 2016 Disparity Study, Keen Independent recommended improvements in ODOT's operation of the Federal DBE Program as well as other measures to level the playing field for small businesses, including minority- and woman-owned companies.

ODOT has had some successes addressing each area of the recommendations objectives. For example, the State has expanded the size of contracts that can be restricted to bidding from ESBs under the Small Contracting Program. ODOT now has a quarterly DBE newsletter and has extensive outreach efforts.

Based on the quantitative and qualitative information in this study and review of good practices for other state DOTs, ODOT's additional neutral efforts could focus on the following seven needs.

1. Certification of additional eligible minority- and woman-owned firms as DBE;
2. Additional efforts to introduce firms to ODOT and local agency prime contract and subcontract opportunities;
3. Further measures to increase DBE participation as prime contractors and consultants;
4. Encouraging DBE participation in new subindustries;
5. Additional capacity-building for DBEs;
6. Addressing other barriers to doing business with ODOT; and
7. Other improvements to operation of the Federal DBE Program regarding neutral measures and other program elements.

1. Certification of additional eligible minority- and woman-owned firms as DBEs. Minority- and woman-owned firms comprised 29 percent of the firms in the availability database for this study. Only in one out of every five of those firms were certified as DBEs.

The dollar-weighted availability of MBE/WBEs for FHWA-funded contracts, 23.46 percent, is composed almost equally of availability for certified DBEs (11.41 percentage points) and minority- and woman-owned firms that are not DBE certified (12.05 percentage points). The study team reviewed available information on revenue and past attempts to be certified to determine whether many of the non-certified companies could be certified. Only one firm in the availability database would not be eligible based on the revenue information provided. (Keen Independent did not have personal net worth information from the availability surveys.)

COBID is the certifying agency for DBEs in Oregon. Some business owners and others interviewed in this study had favorable input about the certification process and some had negative comments, as presented in Appendix J.

Additional assistance with DBE certification. Although ODOT is not responsible for DBE certification, it could do more to reach out to minority- and woman-owned firms that are potential DBEs to encourage certification and assist them in reviewing their eligibility.

Potential impact on overall DBE utilization for FHWA-funded contracts. If all of the MBE/WBEs obtaining ODOT FHWA-funded contracts for FFY2018 through FFY2020 had been DBE-certified, ODOT's DBE utilization would have been at least 4 percent higher than shown in this report. In other words, certification of DBEs alone could increase DBE participation by at least 4 percentage points.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

2. Additional efforts to introduce firms to ODOT and local agency prime contract and subcontract opportunities. More than 40 percent of MBE/WBEs completing the availability survey reported difficulties learning about bid opportunities with public entities in Oregon (a percentage twice that for majority-owned firms.) Some interviewees said that the new OregonBuys system was confusing or that they found it generally difficult to find public sector bid opportunities. About one-half of MBE/WBEs indicated difficulties learning about subcontracting opportunities with prime contractors.

This lack of understanding about how to find bid opportunities is in spite of ODOT outreach and education efforts, which have been extensive.

Providing additional information about bid opportunities. The State of Oregon converted its online source of bid information from ORPIN to OregonBuys in mid-2021. Companies must be registered with OregonBuys to do business with any state agency and receive notices of bid opportunities.

The lack of knowledge about how to learn about ODOT work was evident even after ODOT has conducted training and added information to its website. In addition to general State efforts to educate potential bidders about OregonBuys, ODOT should consider devoting even more resources to help potential prime contractors and subcontractors become aware of and register in the system. Keen Independent's availability database for the disparity study can be one tool to reach out to potential new contractors, consultants and other vendors.

Schedule of future opportunities for consulting contracts. ODOT also provides a 12-month schedule of future construction contract opportunities (prime contracts), but does not publish one for engineering and other professional services contracts. It might attempt to assemble such a list, even if it is not complete.

Additional on-demand training of potential contractors and consultants. Keen Independent's 2019 study of good practices among state DOTs for the Transportation Research Board and FHWA found that even the most successful DBEs valued training that was specific to how contractors and consultants were expected to work with the state DOT and other agencies.⁶⁸ Providing that training on-demand through videos or online materials was a plus.

ODOT could continue to invest in such training.

Potential impact on overall DBE utilization for FHWA-funded contracts. If coupled with DBE certification of firms, increasing the pool of minority- and woman-owned companies knowing of and competing for ODOT and local agency prime contracts and subcontracts would have a positive impact on race-neutral DBE participation in ODOT's FHWA-funded contracts.

The study team was unable to quantify the potential effect.

⁶⁸ National Academies of Sciences, Engineering, and Medicine 2019. *Compendium of Successful Practices, Strategies, and Resources in the U.S. DOT Disadvantaged Business*

Enterprise Program. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25538>.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

3. Further measures to increase DBE participation as prime contractors and consultants. DBEs accounted for only 1.6 percent of total FHWA-funded prime contract dollars for FFY2018–FFY2020.

Enhancing the impact of the ESB program on DBEs. ODOT and other state agencies can limit bidding on small state-funded contracts to firms certified as Emerging Small Businesses (ESBs). For construction contracts, this program was limited to contracts up to \$100,000 for FFY2018–FFY2020. Most contracts went to ESBs that were majority-owned, with MBE/WBE participation of 21.5 percent for state-funded ESB contracts under \$100,000. HB 3055, passed in 2021, increased the size limit for the program to contracts up to \$250,000.

A comprehensive review of ESB Program effectiveness in Oregon is beyond the scope of this study, but the results for ODOT suggest that it should be more effective in encouraging participation of minority- and woman-owned businesses as prime contractors on small ODOT contracts. ODOT might work with COBID and others to seek changes or improvements so that the program can have a greater impact on the participation of minority- and woman-owned companies on state-funded small contracts, which could lead to greater competitiveness of DBEs on FHWA-funded prime contracts.

Creating a parallel program for FHWA-funded prime contracts under \$250,000. The Small Contracting Program does not apply to FHWA-funded contracts. Also, ODOT could not apply preferences for ESBs to federally funded contracts as ESB certification excludes firms located outside of Oregon.

If allowable under federal requirements, ODOT might consider developing a small contracts program to increase the participation of economically disadvantaged businesses in its FHWA-funded contracts up to \$250,000. COBID would need to certify such firms, and there would likely need to be state legislation to allow for such a program.

An economically disadvantaged business might include firms that meet the following criteria:

- A for-profit business that is independent from other companies;
- Located anywhere in the United States (not limited to Oregon);
- Have average annual revenue over three years that is below the size standards for a small business in their subindustry, as determined by the U.S. SBA (the same as for DBE certification); and
- Have owners with personal net worth below the limits established under the Federal DBE Program (\$1.32 million, not counting equity in primary residence and in the business).

Because such a certification would be parallel with DBE certification, a DBE applying for the program could be accepted by showing an approved DBE certification. Firms certified in Oregon as ESBs would need to supplement their information with personal net worth statements. Firms with higher revenue than ESBs, but below SBA size standards, could be certified as well.

Potential impact on overall DBE utilization for FHWA-funded contracts. There are too many unknowns to accurately project the impact on overall utilization of DBEs on FHWA-funded contracts as a whole (large and small) if ODOT developed such a program. A rough estimate might be a 1 percentage point increase in overall DBE participation if all ODOT FHWA-funded contracts could be awarded under such a program and assuming that one-half of the firms certified under this program were DBEs and won 50 percent of these prime contracts. (Analysis based on FFY2018–FFY2020 contracts.) Long term impacts could be greater if more experience on small contracts led to DBE success for larger contracts.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

4. Encouraging DBE participation in new subindustries. For DBE participation on FHWA-funded contracts to grow, DBEs would need to sustain strong participation in certain fields but also expand in other types of work.

Analysis of current DBE participation in FHWA-funded contracts.

Three areas of work accounted for almost one-half of all DBE participation on FHWA-funded contracts for FFY2018–FFY2020:

- Traffic control;
- Excavation, site prep, grading and drainage; and
- Installation of guardrails, fencing or signs.

Among all firms, DBEs performed 61 percent of the dollars of these three types of work on FHWA-funded contracts. There may be room for existing DBEs to expand the amount of work performed in these fields, but, together, the three areas only accounted for 12 percent of total FHWA-funded contract dollars (for FFY2018–FFY2020).

There were four additional areas where total spending was smaller, but DBEs accounted for about one-half or more of the dollars on FHWA-funded contracts. They were:

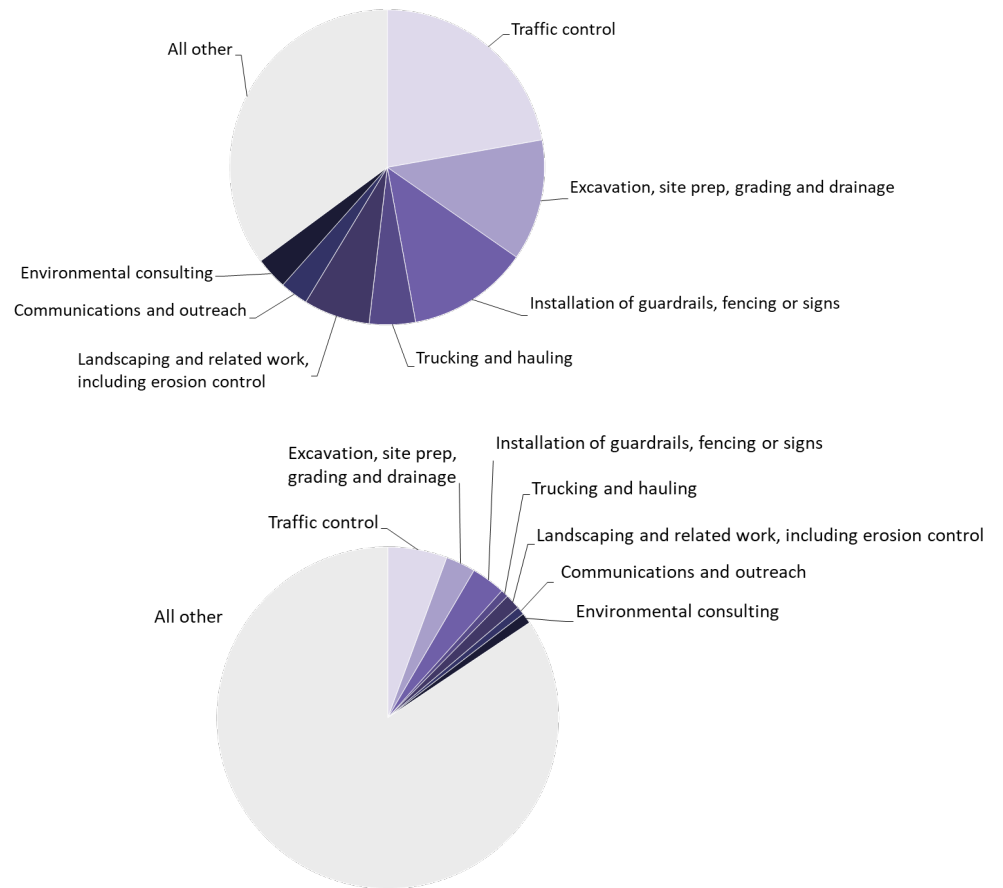
- Trucking and hauling;
- Landscaping and related work, including erosion control;
- Communications and outreach; and
- Environmental consulting.

In each of these four areas, DBEs accounted for about one-half or more of FHWA-funded contract dollars for that discipline. Together, they accounted for 18 percent of total DBE participation on FHWA-funded contracts. There may be opportunity for growth in DBE participation,

but together the four areas are just 4 percent of total spending on FHWA-funded contracts.

In sum, two-thirds of current DBE participation are in fields in which it will be difficult to see growth in DBE utilization that would materially change overall DBE utilization on FHWA-funded contracts.

28. Share of DBE contract dollars (top) and share of total contract dollars (bottom) in each subindustry for FHWA-funded contracts, FFY2018–FFY2020



SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Capacity-building and other assistance focused on areas with low DBE participation. Opportunities for growth in DBE participation might be greatest in the other types of construction and engineering work that account for 84 percent of total FHWA-funded contract dollars. Combined, DBEs obtained only 6 percent of the FHWA-funded contract dollars in these other areas for FFY2018–FFY2020.

Continued monitoring of potential overconcentration of DBEs in FHWA-funded contracts. Although not directly related to neutral remedies, ODOT must continue to monitor potential overconcentration of DBEs in FHWA-funded contracts to be compliant with regulations governing the Federal DBE Program (49 CFR Section 26.33). In addition to the results reported above, Keen Independent analyzed whether DBEs accounted for a dominant share of firms available for specific types of work.

Based on firms in the availability database, there was no worktype where DBEs were more than 18 percent of available firms reporting that they performed that type of work. DBEs did not appear to constitute a dominant portion of firms available for any type of ODOT transportation-related work.

According to federal regulations, ODOT must take action if there is overconcentration of DBEs in a certain type of work that would unduly burden opportunities of non-DBEs to participate in that work. Measures mentioned in the regulations include incentives, technical assistance, business development programs, mentor-protégé programs and varying the use of DBE contract goals. Any determination of overconcentration and steps to address it must be submitted for approval to FHWA.

Potential impact on overall DBE utilization for FHWA-funded contracts. If DBE participation could increase from 6 percent to 10 percent in the broad set of construction, engineering and other work beyond the seven subindustries discussed here, total DBE participation in FHWA-funded contracts could increase by 3.4 percentage points. (This assumes continued strong DBE participation in the disciplines discussed here.) This could happen through:

- Growth of DBEs in the areas with little utilization;
- Diversification of existing DBEs into new fields; and
- Entry of new DBEs into subindustries with low current participation.

Such an increase might be a long-term objective, to be achieved through supportive services of ODOT and others, mentorship, reducing barriers in ODOT and local agency procurement processes, addressing bonding and access to capital, and other initiatives. This hypothetical calculation shows the possible gain, not a projection of what can be achieved from specific measures.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

5. Additional capacity-building for DBEs. ODOT and other groups have held training sessions and other assistance related to capital and bonding. They both remain barriers to the success of many minority- and woman-owned businesses. ODOT might consider measures other state DOTs have taken to better ensure that DBEs can obtain working capital loans and bonds.

Examples of working capital loan programs. There are several examples of regional or statewide working capital programs across the country that focus on capital needs for contractors and consultants. For example, Wisconsin DOT has operated a loan program that covers mobilization since the 1980s. At the time of this report, the American Indian Chamber of Commerce now provides the guarantee, with any Wisconsin bank or credit union eligible to provide the loan.

DBEs awarded WisDOT contracts or subcontracts can apply for the loan, with the contract and the guarantee combining to provide collateral for the loan. Loans can be up to \$250,000. WisDOT provides a capacity building business assessment and additional assistance as part of the application process.

Funds are provided as a line of credit that the DBE can draw upon as needed. Payments made to the DBE are through a two-party check.⁶⁹

Examples of bonding programs. There are many sources of education and training about bonding for construction contractors in the region (see Appendix K). However, there may be a need for additional assistance in actually obtaining bonds for public sector construction

projects. A joint effort that includes ODOT might be the best way to approach this barrier for some small contractors.

As an example of a bond guarantee program, the Colorado Department of Transportation partnered with Lockton Companies to launch the Bond Assistance Program in July 2019, for construction contracts of \$3 million or less. CDOT provides a guarantee of 50 percent.⁷⁰

Firms certified as emerging small businesses (ESBs), including DBEs, are eligible to participate. A potential participant starts the process by undergoing an assessment of whether it is bondable. A firm can participate in the program on one contract only. The surety fee is 2 percent of the contract, and the ESB must participate in a funds control program with the management company (0.75% fee).

Obtaining bonding through the program also helps a contractor meet CDOT's prequalification requirements to bid on a construction contract. For firms not yet prequalified, it provides proof of bonding. For firms that are prequalified, it can be used to increase the size of contract on which the firm can bid as a prime.

Florida DOT has a similar Bond Guarantee Program. There are other examples around the country as well that ODOT could review.

Potential impact on overall DBE utilization for FHWA-funded contracts. The study team was unable to project the potential effect on overall DBE participation from these initiatives alone. These or other steps might be viewed as necessary for other measures, such as a small contracting program, to be fully successful.

⁶⁹ <https://wisconsin.gov/Documents/doing-bus/civil-rights/dbe/dbe-loan-mobilization-brochure.pdf>

⁷⁰ <https://www.codot.gov/business/civilrights/smallbusiness/esb/esb-bap>

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

6. Addressing other barriers to doing business with ODOT. The 2016 Disparity Study identified many different barriers to participation of small businesses including minority- and woman-owned firms in ODOT contracts, especially as prime contractors and consultants. Discussions with ODOT indicate that more can be done to address such disadvantages. Examples of potential steps include:

- Unbundling more contracts;
- Simplifying bidding and prequalification processes;
- Changing evaluation criteria to ensure that they do not inappropriately disadvantage smaller and newer businesses (for example, avoid counting number of staff or years a firm has been in business and instead evaluating experience of the business owner and staff proposed for the project);
- Reviewing whether there is any additional flexibility when bonding is required;
- Reevaluating ODOT requirements concerning hourly rates for consultants;
- Assessing the impact of any excessive ODOT insurance requirements on small businesses;
- Further speeding payment of prime contractors and subcontractors on ODOT projects; and
- Creating additional opportunities for relationship building between DBEs.

These are just some of the examples ODOT and local governments could implement to make their procurement processes more small-business friendly and equitable to firms that have had little participation in these opportunities.

It was not possible to accurately project the potential impact of these types of initiatives on DBE participation.

7. Other improvements to operation of the Federal DBE Program regarding neutral measures and other program elements. Other areas for improvement of program operation are discussed below. These efforts would help monitor and support other steps to increase neutral participation of DBEs in ODOT's contracts.

FTA review of ODOT operation of the Federal DBE Program. At the time of this report, ODOT had received preliminary comments from a review of its operation of the Federal DBE Program for FTA-funded contracts. The review encompassed ODOT's neutral efforts under the Federal DBE Program.

Some of the initial results of the review pertained to whether there was direct, independent access of the DBE liaison officer to the Executive Director. The review also included comments about monitoring DBE participation on contracts and accurate reporting of DBE participation in ODOT's DBE Uniform Reports prepared for FTA.

Proper execution of these functions is required under regulations in 49 CFR Part 26 not only for FTA-funded contracts but for any USDOT-funded contracts. Areas for improvement identified in the final FTA review will also apply to ODOT's operation of the program for FHWA-funded contracts as well.

ODOT was in the process of responding to these issues at the time of this report.

SUMMARY REPORT — Summary of quantitative and qualitative analyses and neutral measures

Tracking of MBE/WBE participation as well as DBE participation. ODOT should develop processes and information systems for better ongoing tracking and regular reporting of DBE participation for its USDOT-funded and its non-federally funded contracts. It should also begin reporting of MBE/WBE businesses, regardless of certification.

- **Improvements to Uniform Reports.** Review of ODOT's Uniform Reports of DBE Commitments/Awards and Payments indicated large differences between DBE participation based on commitments/awards and DBE utilization based on payments. ODOT should improve its tracking and reporting to ensure accuracy in both sets of utilizations figures.
- **Tracking DBE and MBE/WBE participation for addition sets of contracts.** Because reports limited to DBEs miss ODOT utilization of MBE/WBE firms that are too large to be DBE certified or have chosen not to be certified, Keen Independent recommends that ODOT also track participation of all minority- and woman-owned firms, including those that are not currently certified. It should do so for FHWA-funded contracts (separately for contracts with goals and for contracts without goals) and for its state-funded contracts.

ODOT can better monitor the success of its neutral efforts as well as whether its future MBE/WBE participation is in line with the MBE/WBE availability benchmarks identified in this study (or refined benchmarks based on future work). It should do so for individual MBE groups as well as for white woman-owned businesses. Such information will help ODOT to assess whether its inclusion of individual DBE groups in any race- or gender-conscious programs continues to be narrowly tailored under the requirements of the Federal DBE Program and legal decisions in the Ninth Circuit.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

ODOT is required to set an overall annual goal for DBE participation in its FHWA-funded transportation contracts. Federal regulations govern how these goals are determined. Agencies such as ODOT must determine “the level of DBE participation you would expect absent the effects of discrimination.”⁷¹

This section provides information for ODOT to consider as it sets its overall triennial DBE goal for FHWA-funded contracts and its projection of how much of the goal to be met through race-neutral measures.

This section is organized in three parts based on the process that 49 CFR Part 26.45 outlines for agencies to set their overall goals and project the portion to be met through neutral means:

- Establishing a base figure;
- Consideration of a step 2 adjustment; and
- Portion of overall DBE goal for FHWA-funded contracts to be met through neutral means.

Establishing a Base Figure

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

The study team’s approach to calculating ODOT’s base figure is consistent with:

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

Projections of the types, sizes and locations of future FHWA-funded contracts and subcontracts. Discussions with ODOT indicate that analysis of FHWA-funded projects for FFY2018–FFY2020 provide the best projection of types, sizes and locations of FHWA-funded contracts for FFY2023 through FFY2025.

- The mix of FHWA-funded projects for the three years beginning October 2022 is expected to be similar to FHWA-funded projects from October 2018 through September 2020.
- Large projects such as Columbia River Bridge project will have a separate DBE goal and not be included in calculations presented here.
- As funds from the Infrastructure Investment and Jobs Act still need to be allocated, there is no projection for these funds.

In sum, there is no better information than historical information to project FHWA-funded contracts and subcontracts for these three years.

⁷¹ 49 CFR Section 26.45(b).

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

Calculations to convert MBE/WBE availability to current and potential DBEs for the base figure. Figure 29 provides the calculations to derive current/potential DBE availability when starting from the 23.46 percent MBE/WBE availability figure for FHWA-funded contracts.

There were three groups of MBE/WBEs that Keen Independent did not count as potential DBEs when calculating the base figure:

- **Graduated or been denied DBE certification.** The study team examined whether there were, in recent years, MBE/WBEs that 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). No firms were identified in this review.
- **Revenue exceeding DBE limits.** When identifying potential DBEs, Keen Independent did not count MBE/WBEs from the availability surveys that reported having average annual revenue for the most recent three years exceeding the revenue limits for DBE certification for their subindustry. One MBE/WBE appeared to exceed these limits. It was counted as a non-DBE in the base figure analysis.
- **BOLI list.** Keen Independent reviewed whether there were any firms in the availability survey database that were ineligible for work based on their inclusion on the Oregon Bureau of Labor and Industries (BOLI) List of Contractors Ineligible to Receive Public Works Contracts (as of March 2022). No firms from the availability survey were on the BOLI list.

Based on the review explained above, Keen Independent reclassified one MBE/WBE to be a non-DBE in the base figure analysis. This reduced the base figure for FHWA-funded contracts by 0.04 percentage points.

The base figure for ODOT’s overall DBE goal is therefore 23.43 percent. It represents the level of current/potential DBE participation anticipated for FFY2023–FFY2025 based on analysis of ODOT and local agency FHWA-funded contracts from October 2017 through September 2020.

29. Overall dollar-weighted availability estimates for current and potential DBEs for FHWA-funded contracts, FFY2023–FFY2025

Calculation of base figure from past contracts	Availability
Total MBE/WBE	23.46 %
Less firms that graduated from the DBE program or denied DBE certification in recent years or exceed revenue threshold	0.04
Subtotal	23.43 %
Plus white male-owned firms	-
Current and potential DBEs	23.43 %
Current DBEs only	11.41 %

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

Source: Keen Independent availability analysis.

If the types, sizes and locations of FHWA-funded work were to substantially change for the FFY2023 through FFY2025 period, ODOT could reexamine its overall DBE goal for this time period.

Dollar-weighted availability of current DBEs. Keen Independent also calculated the base figure if it only counted current DBEs. (“Potential DBEs” are included in the analysis, but counted as non-DBEs.) The base figure would be 11.41 percent if limited to currently certified DBEs.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

Step 2. Determining if an Adjustment is Needed — 49 CFR Section 26.45(d)

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. Federal regulations outline factors that an agency must consider when assessing whether to make any such “step 2 adjustments” to its base figure:

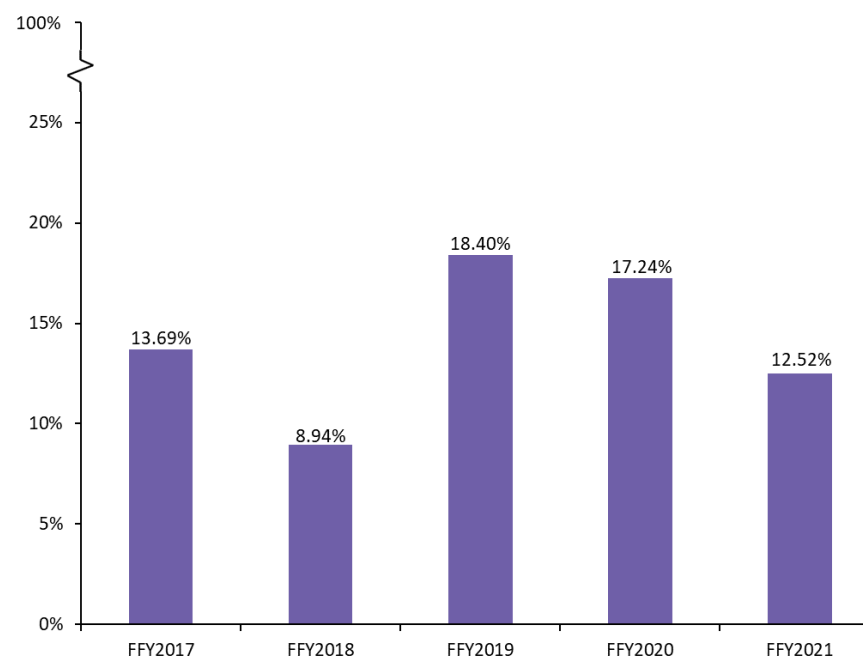
1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.⁷²

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but is still relevant to ODOT as it determines whether to make any step 2 adjustments.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

Figure 30 shows DBE participation based on commitments/award data from ODOT Uniform Reports of DBE Awards or Commitments and Payments that ODOT submitted to FHWA. Using the most recent five fiscal years of results at the time of this report, the median DBE participation is 13.69 percent. As this value is lower than the 23.43 percent base figure, it suggests a possible downward step 2 adjustment based on this factor.

30. DBE participation on FHWA-funded contracts based on ODOT Uniform Reports to FHWA, FFY2017 through FFY2021



Source: ODOT Uniform Reports of DBE Awards or Commitments and Payments.

⁷² 49 CFR Section 26.45.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor. (In effect, this means *averaging* the two numbers.)

The difference between the 23.43 percent DBE participation and 13.69 percent base figure is 9.74 percentage points (23.43% - 13.69% = 9.74%). One-half of this difference is a downward adjustment of 4.87 percentage points (9.74% ÷ 2 = 4.87%). The DBE goal would then be calculated as follows: 23.43% - 4.87% = 18.56%. (These calculations are presented in the top portion of Figure 31.)

2. Information related to employment, self-employment, education, training and unions. Keen Independent’s analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Oregon construction, professional services, goods and other services industries (see Quantitative Analysis in this Summary Report and Appendices E through J).

The study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in Oregon study industries. There were statistically significant disparities in business ownership for certain minority groups and women in some of the study industries. (See Quantitative Analysis in this Summary Report as well as Appendix F.)

Keen Independent analyzed the impact that those barriers in business ownership would have on the base figure if these groups owned businesses at the same rate as similarly situated nonminorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

Quantification of the business ownership factor indicates an upward step 2 adjustment of 10.96 percentage points to reflect the “but-for” analyses of business ownership rates. Appendix N explains these calculations.

If ODOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 34.39 percent (23.43% + 10.96% = 34.39%). The bottom portion of Figure 31 shows these calculations.

31. Potential step 2 adjustments to ODOT’s overall DBE goal for FHWA-funded contracts

Step 2 adjustment component	Value	Explanation
Lower adjustment of overall DBE goal for current capacity		
Base figure	23.43 %	From base figure analysis
Evidence of current capacity	<u>13.69</u>	Past DBE participation
Difference	9.74 %	
	÷ <u>2</u>	Reduce by one-half
Adjustment	4.87 %	Downward adjustment for current capacity
Base figure	23.43 %	From base figure analysis
Adjustment for current capacity	- <u>4.87</u>	Downward step 2 adjustment
Overall DBE goal	18.56 %	Lower range of DBE goal
Upward adjustment of overall DBE goal for business ownership		
Base figure	23.43 %	From base figure analysis
Adjustment for "but for" factors	+ <u>10.96</u>	"But for" step 2 adjustment for business
Overall DBE goal	34.39 %	Upward adjustment of DBE goal for business

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

Source: Keen Independent Research analysis.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

The information about financing and bonding supports an upward step 2 adjustment in ODOT’s overall annual goal for DBE participation in FHWA-funded contracts.

4. Other factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.⁷³

Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the Oregon marketplace. There is quantitative and qualitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors.

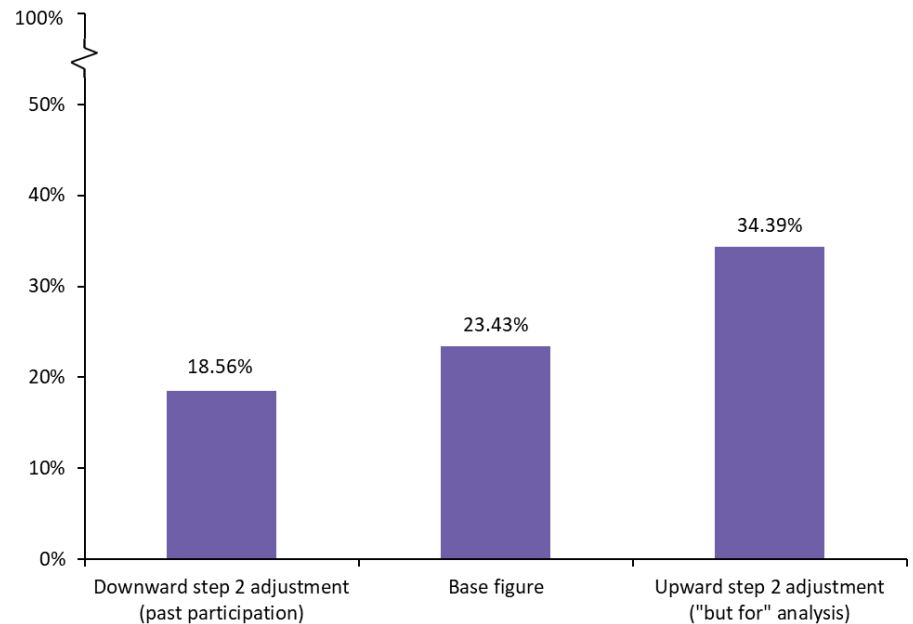
There is no straightforward way to project the number of MBE/WBEs available for ODOT and local agency work but for the effects of these other factors.

Summary. ODOT will need to consider whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal.

- A downward step 2 adjustment reflecting current capacity to perform work, would lead to an overall goal of 18.56 percent.
- An upward adjustment that reflects analyses of business ownership rates would lead to a DBE goal of 34.39 percent.
- If ODOT made no adjustment at all, its overall DBE goal would be 23.43 percent.

Figure 32 summarizes the potential adjustments described in this section.

32. Potential DBE goals for FHWA-funded contracts after step 2 adjustments



Source: Keen Independent Research analysis.

⁷³ 49 CFR Section 26.45.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

Projecting the Portion of the Overall DBE 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.⁷⁴ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small 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.

- 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 as part of its 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 as part of its program.

Based on 49 CFR Part 26 and the resources above, general areas of questions that transportation agencies might ask related to making any projections include the following.

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups? The 2022 Disparity Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

Marketplace conditions. As summarized in the Summary Report, there was quantitative evidence of disparities in outcomes in Oregon marketplace for minority- and woman-owned firms in general and for certain MBE/WBE groups concerning the above issues.

Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes (see Qualitative Analysis section of the Summary Report).

Results of the disparity analysis for FHWA-funded contracts. Utilization of minority- and woman-owned businesses in FHWA-funded contracts without goals was substantially below what might be expected from the availability analysis. This was true for each DBE group.

When examining state-funded contracts, there was a substantial disparity for MBEs overall and for white woman-owned firms (see Disparity Analysis in this Summary Report).

⁷⁴ 49 CFR Section 26.51.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

Summary. ODOT should review the information about marketplace conditions and the disparity analyses for its contracts reviewed in this Summary Report and discussed in detail in study appendices, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures.

The combined information from the marketplace analyses and the disparity analyses for ODOT contracts indicates evidence of disparities in outcomes for African American-, Asian-Pacific American-, Subcontinent Asian American, Hispanic American and Native American-owned firms as well as white woman-owned businesses.

ODOT should consider this information when determining if all DBEs or only firms owned by some racial, ethnic and gender groups will be eligible for any future race- and gender-conscious programs such as meeting DBE contract goals. If it chose to use a DBE contract goals program and that would not include a DBE group as eligible to participate in that program element, ODOT would need to request a waiver from FHWA.

2. What has been the agency’s past experience in meeting its overall DBE goal? Figure 33 summarizes ODOT’s reported DBE participation based on DBE commitments/awards on FHWA-funded contracts.

As shown, ODOT fell short of its overall DBE goals in two of the past five fiscal years.

33. ODOT overall DBE goal and reported DBE participation on FHWA-funded contracts, FFY2017 through FFY2021

Federal fiscal year	DBE goal	DBE commitments/ awards	Difference from DBE goal
2017	11.60 %	13.69 %	2.09 %
2018	11.60	8.94	-2.66
2019	15.40	18.40	3.00
2020	15.40	17.24	1.84
2021	15.40	12.52	-2.88

Source: ODOT Uniform Reports of DBE Awards or Commitments and Payments.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

3. What has DBE participation been when ODOT has not applied DBE contract goals (or other race-conscious remedies)?

Keen Independent examined three sources of information to assess race-neutral DBE participation:

Race-neutral DBE participation in recent ODOT Uniform Reports.

Per USDOT instructions, ODOT counts as “neutral” participation any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

ODOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for the five most recent federal fiscal years indicate median race-neutral participation of 6.10 percent. Figure 34 presents these results.

34. ODOT-reported race-neutral and race-conscious DBE participation on FHWA-funded contracts, FFY2017 through FFY2021

Federal fiscal year	DBE commitments/award		
	Total	Race-conscious	Race-neutral
2017	13.69 %	7.59 %	6.10 %
2018	8.94	6.08	2.86
2019	18.40	10.02	8.38
2020	17.24	10.42	6.82
2021	12.52	6.79	5.73

Source: ODOT Uniform Reports of DBE Awards/Commitments and Payments.

DBE participation on contracts without DBE contract goals.

Keen Independent also analyzed DBE participation on ODOT’s FHWA-funded contracts without DBE contract goals. ODOT achieved 3.49 percent DBE participation on these contracts from October 2017 through October 2020.

DBE participation as prime contractors.

Keen Independent examined DBE participation as prime contractors on FHWA-funded contracts. From October 2017 through September 2020, the DBE participation on prime contracts was about 1.3 percent for FHWA-funded contracts.

4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ODOT must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent’s analysis of neutral remedies indicates that ODOT has already implemented an extensive set of neutral measures. At this time, it is unclear whether any additional neutral measures would increase race-neutral participation of DBEs in ODOT’s FHWA-funded contracts.

SUMMARY REPORT — Overall DBE goal and projections of neutral participation

If ODOT uses a combination of neutral means and DBE contract goals, how much of the overall DBE goal can ODOT project to be met through neutral means? In 2019, ODOT set an overall DBE goal of 15.37 percent for FHWA-funded contracts for FFY2020 through FFY2022 and projected that 4.73 percentage points of its overall goal would be met through neutral means.

For FFY2023 through FFY2025, ODOT might increase its projection of race-neutral DBE participation to at least 6.10 percentage points of its overall DBE goal for FHWA-funded contracts.

- The median DBE participation through race neutral means was 6.10 percent based on ODOT’s reports for FFY2017 through FFY2021 (presented earlier in this section).
- ODOT’s current neutral initiatives are already considerable and will continue to expand.
- Keen Independent identified additional neutral measures for ODOT consideration in this report, including their estimated impact on total neutral DBE participation (which could exceed 5 percentage points).

The second column of numbers in Figure 35 provides projections using an overall DBE goal of 18.56 percent and a 6.10 percentage point race-neutral projection for FFY2023 through FFY2025. The race-conscious portion of the goal is 12.46 percentage points.

As indicated in the other columns of Figure 35, the race-conscious projection would need to be higher if ODOT selected an overall DBE goal in the range of 23 to 34 percent.

35. ODOT overall DBE goal and projections of race-neutral participation for FHWA-funded contracts for FFY2023–FFY2025

Component of overall DBE goal	FFY2020–FFY2022	FFY2023–FFY2025		
		Downward adjustment - current capacity	Base figure	Upward adjustment - business ownership
Overall goal	15.37 %	18.56 %	23.43 %	34.39 %
Neutral projection	- 4.73	- 6.10	- 6.10	- 6.10
Race-conscious projection	10.64 %	12.46 %	17.33 %	28.29 %

Source: Keen Independent Research analysis.

SUMMARY REPORT — Public Comment Process for the 2022 Disparity Study Report

ODOT published a draft of the disparity study report for public comment in May 2022. The public could make comments on the draft report and ODOT's proposed overall DBE goal through June 20, 2022.

ODOT held six virtual Town Halls concerning the Disparity Study and ODOT's proposed DBE goal.

- State/Agency-wide: Monday, May 23, 2022, from 2:00 to 3:30 pm;
- Region 1: Tuesday, May 24, 2022, from 3:00 to 4:30 pm;
- Region 2: Wednesday, May 25, 2022, from 3:00 to 4:30 pm;
- Region 3: Thursday, May 26, 2022, from 10:00 to 11:30 am;
- Region 4: Tuesday, June 7, 2022, from 1:00 to 2:30 pm; and
- Region 5: Friday, June 10, 2022, from 10:30 am to noon.

Information about the virtual Town Halls was available at www.keenindependent.com/odotdisparitystudy2022/. In addition, the public was able to submit feedback and provide written comments through the following means:

- During Virtual Town Halls;
- Online at the above web address;
- By calling the study telephone hotline (503) 765-6663;
- Via email at ODOTDisparityStudy2022@keenindependent.com; and
- By regular email sent to Annette Humm Keen, Principal Keen Independent Research
701 N. 1st Street, Phoenix AZ 85004

After the release of the draft report and proposed overall DBE goals, 11 individuals provided comments on behalf of themselves or their organizations during the comment period. (See Contract Goals and Other Preferences Programs, Contractor-Subcontractor Relationships, Certification and Transparency and Consistency sections of Appendix J for additional information.) These comments as well as the questions received during the Town Halls were reviewed and incorporated into the final report.

Keen Independent and ODOT then prepared final documents for USDOT concerning overall DBE goals for FHWA-funded contracts. This process follows the approach for public review of the 2016 Disparity Study that Keen Independent prepared for ODOT.