



U.S. Department
of Transportation
**Federal Highway
Administration**

Oregon Division

March 27, 2015

530 Center Street NE, Suite 420
Salem, Oregon 97301
503-399-5749
503-399-5838 (fax)
www.fhwa.dot.gov/ordiv

In Reply Refer To:
HDA-OR
File:
970.000

Mr. Matthew Garrett
Director
Oregon Department of Transportation
1158 Chemeketa St NE
Salem, OR 97301-3871

Dear Mr. Garrett:

In accordance with the provision under 49 CFR §26.45, we have reviewed the overall FY 2015-16 Disadvantaged Business Enterprise (DBE) goal submitted by the Oregon Department of Transportation (ODOT). ODOT submitted an overall goal of 13.1% for FY 2015-2016, of which 5.2% will be attained through race and gender conscious means and 7.9% will be attained through race and gender neutral means. Our review considers the overall goal, the description of the data and methodology used in arriving at your overall goal, and the base figure calculation and evidence supporting the calculation.

After reviewing this information, we have determined that the goal setting methodology you have chosen is consistent with the requirements under 49 CFR §26.45 and that you have followed the requirements for public participation in establishing your overall goal as set forth in 49 CFR §26.45(g). Further, we grant approval of the portions of your overall goal that you expect to meet through race neutral and race conscious means. The projection is subject to modification during the fiscal year(s) in accordance with 49 CFR §26.51. The basis for our approval and conditions are set forth more fully in the attached decision document.

As a reminder, the state is required to submit a separate overall DBE goal for programs funded by the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA), based upon the goal setting approach outlined in the State's DBE program. The State should contact the regional FTA and FAA offices for further guidance and assistance on these matters.

I would like to take this opportunity to thank you and your staff for your diligence and efforts in getting this program to the approval stage.

Sincerely,

Phillip A. Ditzler
Division Administrator

CC: Tiffany Hamilton (ODOT w/encl)

**EXPLANATION FOR APPROVAL OF
OREGON DEPARTMENT OF TRANSPORTATION (ODOT)
DISADVANTGED BUSINESS ENTERPRISE (DBE) PROGRAM
GOAL SETTING METHODOLOGY
FOR FISCAL YEAR 2015-2016**

This document sets forth the Federal Highway Administration’s (FHWA) reasons for approving the ODOT overall DBE goal methodology for FY 2015-2016 based on the completion of a 2013 Availability Study Update prepared by MGT of America, Inc. (MGT), which is based on ODOT’s 2011 Disparity Study Update Report. The overall DBE goal has been set at 13.1%, of which 5.2% will be attained through race and gender conscious means and 7.9% will be attained through race and gender neutral means. ODOT is expected to make a good faith effort to meet its overall goal.

Overall DBE Goal FY 2015-2016 – 13.1%	
Race Neutral	7.9%
Race Conscious	5.2%

GOAL SETTING METHODOLOGY 49 CFR §26.45(b)

The regulations require recipients to set overall goals based on demonstrative evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT- assisted contracts.

A. STEP ONE - DETERMINATION OF BASE FIGURE 49 CFR §26.45(c)(3)

Under the regulations, the State must begin the process by determining the base figure for the relative availability of DBEs.

Method Selected

- ODOT’s method for establishing the base figure for the relative availability of DBEs is allowable under 49 CFR §26.45(c)(3). Option (3) allows a recipient to use a percentage figure derived from data in a valid, applicable disparity study. In this case, MGT of America, Inc., Disparity Study Consultants, prepared a 2013 Availability Update Report based on ODOT’s 2011 Disparity Study Update Report. ODOT specifically requested of MGT of America, Inc. to provide an Availability Update on DBE and Minority and Women owned businesses in Construction and Architecture & Engineering. MGT of America analyzed data provided by ODOT and the Office of Minority, Women, and Emerging Small Business (OMWESB). Note: The MGT of America’s 2013 Availability Update did not consider Portland’s 2009 Disparity Study. However, ODOT reviewed and considered the Portland Study to determine whether an adjustment would be needed in step two.

Relevant Market

- For ODOT’s DBE Program, the relevant market area includes all the counties in Oregon and the Portland Metropolitan Statistical Area (MSA), which includes Clark and Skamania in Washington State. ODOT based its determination on data from the 2013 Availability Study Update. Based on ODOT’s calculation, 93.3% of

firms are doing business with ODOT are located in the State of Oregon and the Portland MSA.

Methodology

- The 2013 Availability Update report captured certified and potential DBE (Non-DBE Firms) availability by Prime and Subcontractor levels in the primary business categories that receive FHWA funding: Construction and Architecture & Engineering (A&E) and related services.
- In calculating the Step One Base Figure, ODOT uses the certified plus potential DBE availability from the 2013 Availability Update Report which is broken down by Prime and Subcontractor levels of participation in the Construction and A&E. See exhibit 2-11.

**Exhibit 2-11
Comparison of Certified DBE and Potential DBE Firms by
Business Category**

Construction Prime	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Prime Certified DBE	32	7.31	406	92.69	438
Prime Potential DBE	13				
Certified + Potential DBE	45	10.00	393	90.00	438

Construction Sub	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Sub Certified DBE	137	16.25	706	83.75	843
Sub Potential DBE	32				
Certified + Potential DBE	169	20.00	674	80.00	843

A&E Prime DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Prime Certified DBE	17	13.71	107	86.29	124
Prime Potential DBE	15				
Certified + Potential DBE	32	25.81	92	74.19	124

A&E Sub DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Sub Certified DBE	38	20.54	147	79.46	185
Sub Potential DBE	12				
Certified + Potential DBE	50	27.03	135	72.96	185

Source: MGT Availability Update Report, Exhibit 2-11, Page 2-14

- Table 1 below summarizes the certified plus potential DBE availability:

**Table 1
Certified Plus Potential DBE
Availability**

Level	Construction	A&E
Prime	10.0%	25.8%
Sub	20.0%	27.0%

Source: Table provided by ODOT as part of the proposed Overall DBE Goal FY 15-16

- Next, certified plus potential DBE availability is weighted by prime and subcontractor levels of participation in the Construction and A&E business categories. From the 2011 Disparity Study, the calculation involves weighting by Prime and Subcontractor participation levels based on 2008 through 2010 Retained Award data. The formula applied to determine Prime and Subcontractor retained award data is as follows:

Formula for Prime Retained Dollars

Prime Award Dollars – Sub Award Dollars = Prime Retained Dollars

Formula for Prime Participation Percentage

Prime Retained Dollars / Prime Award Dollars = Prime Participation Percentage

Formula for Subcontractor Percentage

100% - Prime % = Subcontractor %

Based on ODOT's 2011 Disparity Study data, the formulas (above) were applied to determine the Prime and Sub retained awards and participation data for Construction and A&E. For Construction Contract data, see Exhibit 4-3 (Prime) and Exhibit 5-1 (Sub) on pages four and five of this document.

**EXHIBIT 4-3
STATEWIDE
CONSTRUCTION CONTRACTS
UTILIZATION ANALYSIS OF PRIME CONTRACTORS IN THE RELEVANT MARKET AREA
DOLLARS AND PERCENTAGE OF FEDERAL DOLLARS AWARDED
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent Americans		Asian Pacific Americans		Native American		Nonminority Women		MWBE Subtotal		NON-MWBE Firms		Total Federal Dollars Awarded
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	
2008	\$0	0.00%	\$9,154,140	1.75%	\$0	0.00%	\$0	0.00%	\$878,886	0.18%	\$19,900,132	3.89%	\$29,933,159	5.86%	\$481,257,718	94.14%	\$511,150,876
2009	\$0	0.00%	\$34,758,529	7.47%	\$0	0.00%	\$0	0.00%	\$1,963,129	0.46%	\$4,087,577	0.88%	\$40,809,235	8.77%	\$424,608,774	91.23%	\$465,418,009
2010	\$0	0.00%	\$11,074,529	3.50%	\$0	0.00%	\$0	0.00%	\$1,538,600	0.53%	\$4,001,080	1.26%	\$16,674,409	5.25%	\$300,160,674	94.74%	\$316,835,083
Total	\$0	0.00%	\$54,987,198	4.25%	\$0	0.00%	\$0	0.00%	\$4,440,615	0.34%	\$27,988,789	2.16%	\$87,416,602	6.76%	\$1,206,027,166	93.24%	\$1,293,443,968

Source: MGT developed a contract and vendor database for ODOT for the period of October 1, 2007, to September 30, 2010.
¹ Percent of total dollars awarded annually to prime contractors.

**EXHIBIT 5-1
UTILIZATION OF CONSTRUCTION SUBCONTRACTORS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent		Asian Pacific		Native Americans		Nonminority Women		MWBE Subtotal		NON-MWBE Total		Total Federal Dollars Awarded
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	
2008	\$20,283,000	0.02%	\$7,077,886,000	6.07%	\$30,000,000	0.03%	\$4,600,000	0.04%	\$2,889,442,000	2.49%	\$16,380,529,000	14.00%	\$26,420,394,000	22.96%	\$90,196,415,000	77.04%	\$116,629,949,000
2009	\$1,947,922,000	1.09%	\$4,183,031,000	2.33%	\$82,851,000	0.05%	\$1,049,247,000	0.59%	\$6,927,740,000	3.86%	\$21,728,970,000	12.72%	\$35,889,651,000	20.01%	\$149,462,301,000	79.99%	\$179,322,162,000
2010	\$2,751,775,000	1.10%	\$8,827,404,000	3.53%	\$270,468,000	0.11%	\$5,944,480,000	2.38%	\$9,339,853,000	3.73%	\$28,400,529,000	9.35%	\$50,534,313,000	20.20%	\$198,678,441,000	79.80%	\$250,212,754,000
Total	\$4,719,984,000	0.85%	\$20,887,121,000	3.68%	\$383,319,000	0.06%	\$7,098,927,000	1.29%	\$19,166,835,000	3.51%	\$61,489,922,000	11.25%	\$112,665,309,000	20.68%	\$493,307,957,000	79.34%	\$546,163,865,000

Source: Oregon Department of Transportation.

¹ Percent of Total Dollars Awarded.

² The Total Dollars Awarded is the actual amount given to prime contractors and subcontractors combined.

Source: ODOT's 2011 Disparity Study, Exhibit 4-3 (Page 4-13), Exhibit 5-1 (Page 5-3)

Construction Contracts – Prime Retained Dollars

\$1,293,443,968 (Prime Award Dollars) - \$546,163,865 (Sub Award Dollars) =
\$747,280,103 (Prime Retained Dollars)

Construction Contracts – Prime Participation Percentage

\$747,280,103 (Prime Retained Dollars)/\$1,293,443,968 (Prime Award Dollars) =
57.77% (Prime Participation %)

Construction Contracts – Sub Participation Percentage

100%-57.77% = 42.23%

For Architecture & Engineering Contract data, see Exhibit 4-12 (Prime) and Exhibit 5-16 (Sub) on page five of this document.

EXHIBIT 4-12
ARCHITECTURE AND ENGINEERING
UTILIZATION ANALYSIS OF PRIME CONTRACTORS IN THE RELEVANT MARKET AREA
DOLLARS AND PERCENTAGE OF FEDERAL DOLLARS AWARDED
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent Americans		Asian Pacific Americans		Native American		Minority Women		WBE Subtotal		NON-WBE Firms		Total Federal Dollars Awarded
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2008	\$13,520	0.02%	\$100,000	0.15%	\$0	0.00%	\$78,073	0.12%	\$0	0.00%	\$519,037	0.78%	\$704,630	1.07%	\$65,081,605	98.93%	\$65,796,234
2009	\$87,240	0.08%	\$172,898	0.17%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$1,067,589	1.03%	\$1,327,727	1.29%	\$101,881,884	98.71%	\$103,189,610
2010	\$24,395	0.02%	\$4,787,208	3.21%	\$0	0.00%	\$4,955	0.00%	\$0	0.00%	\$704,149	0.47%	\$5,520,707	3.71%	\$143,420,759	96.29%	\$146,941,466
Total	\$125,155	0.04%	\$5,060,106	1.59%	\$0	0.00%	\$83,027	0.03%	\$0	0.00%	\$2,284,775	0.72%	\$7,553,063	2.38%	\$310,334,248	97.62%	\$317,887,311

Source: MGT developed a purchase order and vendor database for the Oregon Department of Transportation for the period of October 1, 2007 through September 30, 2010.
¹ Percent of total dollars awarded annually to prime contractors.

EXHIBIT 5-16
STATEWIDE
UTILIZATION OF ARCHITECTURE AND ENGINEERING SUBCONSULTANTS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent		Asian Pacific		Native Americans		Minority Women		WBE Subtotal		NON-WBE Total		Total Federal Dollars Awarded ²
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2008	\$0.00	0.00%	\$180,812.00	1.04%	\$0.00	0.00%	\$49,807.00	2.87%	\$302,376.00	1.74%	\$387,382.95	2.29%	\$1,380,375.35	7.94%	\$16,013,716.53	92.06%	\$17,394,091.93
2009	\$0.00	0.00%	\$5,908.00	0.08%	\$0.00	0.00%	\$315,307.68	4.12%	\$0.00	0.00%	\$319,584.00	4.17%	\$640,688.68	8.37%	\$7,017,722.32	91.63%	\$7,658,410.91
2010	\$0.00	0.00%	\$95,500.00	1.05%	\$0.00	0.00%	\$62,731.00	0.69%	\$0.00	0.00%	\$129,711.00	1.42%	\$398,022.00	3.17%	\$8,838,878.44	96.83%	\$9,127,900.44
2008-2010 ²	\$0.00	0.00%	\$120,200.00	1.43%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$120,200.00	1.43%	\$8,308,865.92	98.57%	\$8,429,065.92
Total	\$0.00	0.00%	\$403,500.00	0.95%	\$0.00	0.00%	\$877,845.68	2.05%	\$302,376.00	0.71%	\$846,687.95	1.99%	\$2,420,411.03	5.70%	\$40,179,181.51	94.30%	\$42,609,592.54

Source: Oregon Department of Transportation.

¹ Percent of Total Dollars Awarded.

² The Total Dollars Awarded is the actual amount given to prime contractors and subcontractors combined.

Source: ODOT's 2011 Disparity Study, Exhibit 4-12 (Page 4-26), Exhibit 5-16 (Page 5-20)

A&E – Prime Retained Dollars

\$317,887,311 (Prime Award Dollars) - \$42,609,592 (Sub Award Dollars) =
 \$275,277,719 (Prime Retained Dollars)

A&E Contracts – Prime Participation Percentage

\$275,277,719 (Prime Retained Dollars) / \$317,887,311 (Prime Award Dollars) = 86.60%
 (Prime Participation %)

A&E Contracts – Sub Participation Percentage

100% - 86.60% = 13.40%

Next, Certified DBE availability data is weighted by Prime and Subcontractor participation levels in Construction and A&E. The formula is as follows: [(DBE Prime

Availability) x (% of Prime retained dollars)] + [(DBE Sub Availability) x (% of Sub retained dollars)] = Total Certified DBE Availability.

Table 2 below shows Certified plus Potential DBE Availability weighted by Contractor participation levels in Construction & A&E.

Table 2
DBE Availability by Business Category Weighted by Contractor Participation Level

Level	Construction					A&E				
Prime	10.0%	x	57.8%	=	5.8%	25.8%	x	86.6%	=	22.3%
Sub	20.0%	x	42.2%	=	8.4%	27.0%	x	13.4%	=	3.6%
Total					14.2%					26.0%

Source: Table provided by ODOT as part of the proposed Overall DBE Goal FY 15-16

Finally, ODOT’s Step One Base Figure is calculated by weighting DBE Availability by the percentage of federal dollars spent in Construction and A&E. For data used to calculate federal dollars spent, see exhibit 4-3 (Construction) and exhibit 4-12 (A&E) on pages 4 and 5 of this document.

The percentage of federal dollars spent in each business category is calculated as follows:

- Construction \$1,293,443,968/Total \$1,611,331,279 = 80.3%, and
- A&E \$317,887,311/Total \$1,611,331,279 = 19.7%

Table 3 shows the total DBE availability weighted by the percent of federal spending in each business category. The formula is as follows: [(DBE Availability Construction x Percent Spent in Construction) + (DBE Availability A&E x Percent Spent in A&E)] = Total DBE Availability.

Table 3
Total DBE Availability Weighted by Business Category

Business Category	DBE Availability	Business Category Spending Weight	Weighted DBE Availability
Construction	14.2%	80.3%	11.4%
A&E	26.0%	19.7%	5.1%
Total DBE Availability =			16.5%

Source: Table provided by ODOT as part of the proposed Overall DBE Goal FY 15-16

Step One Base Figure = 16.5%

B. STEP TWO - ADJUSTMENTS 49 CFR §26.45(d)

Once a base figure has been calculated, the State must examine all of the evidence available in its jurisdiction to determine if an adjustment is needed to the base figure to arrive at the overall goal. The idea is to identify the level of DBE participation one would expect, absent the effects of current and past discrimination.

ODOT considered the following information to determine if a Step Two adjustment is warranted:

- ODOT determined the Median past DBE participation percentage.

Annual DBE Participation (last five years)	
FY	Percentage
2010	9.6%
2011	15.11%
2012	10.4%
2013	9.0%
2014	8.7%
Median	9.6%

Source: Table provided by ODOT as part of the proposed Overall DBE Goal FY 15-16

ODOT followed the guidance provided in the *U.S. DOT's Tips for Goal – Setting in the Disadvantaged Business Enterprise (DBE) Program* in determining whether an adjustment was warranted since the Step One Base Figure of 16.5% is significantly higher than the median past participation of 9.6%. As a result, ODOT took an average of the Step One Base Figure with the median of the past years' participation rates. The formula is as follows:

$$\frac{\text{Base Goal calculated in Step 1} + \text{Median achievement past 5 years}}{\text{Divided by 2}} = \text{Goal}$$

$$16.5\% + 9.6\% / 2 = 13.1\% \text{ Goal}$$

ODOT considered the following information to determine if an additional Step Two adjustment is warranted:

- ODOT considered the findings associated with the City of Portland's 2009 Disparity Study. However, Portland's construction opportunities include more vertical construction whereas ODOT's are primarily in horizontal construction. Therefore, the Study was not deemed relevant to a step two adjustment.
- ODOT considered the value of projects from ODOT's 2012-2015 and 2015-2018 STIP. ODOT also considered location of projects and found the majority of them in Regions 1 and 2. ODOT also found that the majority of DBE firms are also located in those regions. However, ODOT determined that this information would not warrant a step two adjustment.

- ODOT considered a 2009 Capacity Study that looked at DBE firm capacity. ODOT also considered the number of certified DBE firms in Oregon. As of February 17, 2015, there were 597 certified DBE firms. Based on this information, ODOT determined that a step two adjustment is not necessary because these firms were accounted for as part of the step one base figure calculation.
- ODOT referenced the City of Portland’s 2009 Disparity Study finding on statistical data that shows disparity in access to credit and financing and provides analysis that indicates disparity negatively impacts minority owned firms. Also, ODOT’s 2011 Disparity Study provided anecdotal information indicating that access to credit, financing, and bonding capacity are barriers that affect the ability of DBEs to form, grow and compete. ODOT is unclear how these findings would affect the overall DBE Goal. For this reason, ODOT determined that a step two adjustment is not needed.
- Lastly, ODOT states that there were no formal complaints, claims or lawsuits alleging discrimination in bonding or financing.

Based on the median past participation percentage, ODOT determined a step two downward adjustment was needed. As a result, ODOT proposed an overall DBE Goal of 13.1%.

C. RACE AND GENDER NEUTRAL AND CONSCIOUS MEASURES

In accordance with 49 CFR §26.51, ODOT has evaluated race and gender neutral and conscious measures. ODOT anticipates that it can achieve 5.2% of its DBE participation through race and gender conscious means and 7.9% will be attained through race and gender neutral means.

- ODOT determined the race-neutral and conscious split by applying the race and gender neutral achievement FY 2010–2014 data from the Uniform Report of DBE Commitments/Awards and Payments.

Annual RN Participation (last five years)	
FY	Race Neutral Utilization
2010	7.9%
2011	13.2%
2012	9.6%
2013	5.1%
2014	7.1%
Median	7.9%

Source: Table provided by ODOT as part of the proposed Overall DBE Goal FY 15-16

- The median race and gender neutral achievement for the last five years is 7.9%. ODOT anticipates it will meet 7.9% of its overall goal through race and gender neutral means and 5.2% by setting race and gender conscious contract goals on Construction and A&E contracts.

- On August 20, 2012, the U.S. DOT approved ODOT's request to modify the DBE Program waiver granted on September 9, 2008, to reflect the results of the 2011 Disparity Study. Construction contracting race conscious measures are limited to the following groups: African American and Subcontinent Asian Americans. For Architecture and Engineering, race and gender conscious measures apply to the following groups: African American, Subcontinent Asian American, Native American, Hispanic American, and non-minority women.

Based on ODOT's Proposed Overall DBE Goal FY 2015-2016 and on-going discussions, ODOT will submit a waiver request by March 31, 2015.

Race neutral measures used by ODOT to meet its overall goal

- ODOT offers small business quarterly trainings, participates in outreach events, provides supportive services and communicates with the sub and prime contractor community about ODOT's DBE Program.

D. PUBLIC PARTICIPATION 49 CFR §26.45(g), §26.15(b)(1)

The regulation requires that the State must provide for public participation when establishing its overall goal.

ODOT's public participation activities took place prior to FHWA's review and since then the overall DBE goal methodology has been revised by ODOT in response to comments provided by FHWA. As discussed, it was not necessary for ODOT to host additional public meetings. Once the DBE Goal Setting Methodology is approved by FHWA, ODOT has indicated that their documentation will be posted on their website and various stakeholders will be notified.

Public Participation for proposed DBE Goal FY 2015-2016

- On June 17, 2013, ODOT initially published a Public Notice proposing a goal of 14.68%. Due to ODOT's need to further review and refine the data, the notice was withdrawn on July 2, 2013.
- On February 14, 2014, ODOT posted a public notice of the revised proposed annual goal of 12.29% for FFYs 2014 – 2016 on ODOT's Office of Civil Rights (OCR) webpage. The notice announced two public meeting dates, one in Salem on March 11th and another in Portland on March 18th.
- From February 19 through March 3, 2014, ODOT published a public notice indicating the purpose of the public meeting and information needed for the public to learn and comment on the proposed DBE goal. The following Oregon newspapers as well as minority focused newspapers advertised ODOT's public notice:
 - The Bulletin
 - El Latino de Hoy
 - The Register Guard
 - Mail Tribune

- Daily Journal of Commerce (DJC)
- The Oregonian
- Statesman Journal
- The Asian Reporter
- The Portland Observer
- The Skanner

- Also, on February 19th, 2014, ODOT e-mailed the same public notice published in the aforementioned newspapers to internal stakeholders for the purpose of distributing the notice within their respective networks. On March 4, and 17, 2014 ODOT sent out electronic reminders to DBE firms and industry stakeholders.

- On February 19th, ODOT's Proposed DBE Goal Notice and a Summary Rationale describing how the goal was calculated was shared with DMWESB firms certified in the construction and A&E NAICS, to the Association of General Contractors (AGC – Oregon Columbia Chapter), the American Council or Engineering Companies (ACEC – Oregon), various chambers of commerce, women and minority advocacy organizations, the Governor's Director of Economic and Business Equity, and to FHWA Oregon Division.

- On March 11, 2014, ODOT hosted a public meeting in Salem to share and receive information related to ODOT's proposed overall DBE Goal of 12.29%. Based on the sign-in sheet, two DBE firm owners and two primer contractors were in attendance. A summary of comments were included in ODOT's submittal.

- On March 18, 2014, ODOT hosted a public meeting in Portland to share and receive information related to ODOT's proposed overall DBE Goal of 12.29%. Based on the sign-in sheet, 35 members of the public were in attendance including DBEs (Construction and A&E), prime contractors, a few minority organization representatives, FHWA, and several agency staff members.

As part of ODOT's public involvement, below are written and oral comments from DBEs, DBE Advocates, Contractors and other stakeholders. These comments were addressed by ODOT during the public meeting and responses to these comments were also a part of ODOT's submittal to FHWA. Also, ODOT intends to continue these discussions with the public as they develop their next 2016 ODOT Disparity Study which involves an external stakeholders group meeting and on-going public outreach.

- Concerns over the methodology.
- DBE prime and low – bid participation should not be taken into account when setting a goal.
- Acknowledgment by the DBE community that the calculation was logical, however, disagreed that logic alone does not take into account other less tangible factors.
- Comments on behalf of African Americans DBES said that the Goal should be much larger because the existing goals for some African American DBEs are still not winning work on ODOT projects.

- ODOT's DBE program has been poorly run for years and there has been significant fraud in the program therefore ODOT should set a higher overall goal. The commenter added that ODOT needs to monitor DBE compliance.
 - ODOT has been actively monitoring DBE compliance and their firm has undergone commercially useful function reviews on all their recent projects.
 - DBE Goal should be set higher to account for DBEs that have been decertified.
 - ODOT should do more in general to reduce contracting barriers, particularly, A&E contracting.
 - ODOT should continue to do more to reduce barriers to participation in ODOT contracting.
 - ODOT's projects are too large for many DBES to participate as prime contractors.
 - Concerns over an increase in the use of DBE fuel and asphalt suppliers to meet contract goals and expressed concerns over how this may impact the overall goal.
 - DBE program is inherently discriminatory and is so administratively burdensome, ODOT should decline to take U.S. DOT assistance and do away with ODOT's DBE Program.
 - Assistance should end at the time of bid submission, because to do otherwise is to have set – asides for designated classes of businesses.
 - Concerns regarding the 2011 Disparity Study and the waiver effects.
 - Goal was high but would be more achievable if all DBE groups were eligible to meet hard contract goals.
 - Hispanic, Native American, and Women – Owned DBEs raised concerns over potential impacts the race – conscious portion may have on DBE groups not eligible to participate in contract goals.
 - Several DBEs shared concerns that a few DBEs in one minority groups who successfully bid as primes or win substantial subcontract work skew the participation numbers for the rest of a group.
- On-going outreach in which ODOT provided information regarding the proposed DBE goal:
- A&E Goal Setting Committee (April 2012 – March 2013)
 - ACEC-ODOT Liaison and Steering Committee Meetings (A&E Industry)
 - ODOT Industry Leadership Committee Meetings (Construction)
 - Oregon Local Programs Committee (OLPC)
 - ACEC Conference (April 4, 2013)
 - AGC Conference (February 2, 2013)
 - National Association of Women in Construction (NAWIC) – Salem (June 2013) and Portland (January 2014)
 - National Utility Contractors Association (NUCA) (October 2013)

- Hispanic Chamber Meet & Greet (January and March 2013)
- Hispanic Chamber Employment & Business Fair (June 2013)
- Our Native American Business Enterprise Network (ONABEN) Fair – Bend (April 2013)
- Governor’s Market Place – Salem (April 17, 2013)
- Governor’s Road Show – 13 cities, statewide (July – November, 2013)
- Oregon Association of Minority Entrepreneurs (OAME), monthly contractors meetings
- Civil Rights Manager and Director meeting with Chair Cano and small business owners from the Latino community to discuss DBE goal and waiver (February 6, 2013)
- Development and Publication of ODOT’s DBE FAQs – Provided opportunity to stakeholders to submit questions or comments on the draft document. Final documents were published in May 2013 and presented to stakeholders at construction and A&E industry leadership meetings.

CONCLUSION

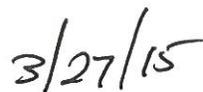
For the above reasons, FHWA approves the ODOT FY 2015-2016 adjusted DBE Goal Setting Methodology.

- The next scheduled DBE goal submission by ODOT will be due to FHWA on August 1, 2016.



For Phillip A. Ditzler

Division Administrator



Date

OREGON DEPARTMENT OF TRANSPORTATION
REVISED Proposed Overall DBE Goal FFY 2015 – 2016
FHWA-Funded Contracting

SUMMARY:

The Oregon Department of Transportation (ODOT) proposes an overall Disadvantaged Business Enterprise (DBE) goal for its Federal Highway Administration (FHWA) funded contracting of 13.1% for Federal Fiscal Years 2015 through 2016. The overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses currently ready, willing, and able to participate on ODOT’s USDOT-assisted contracts. ODOT estimates 7.9% of the overall goal can be achieved through race- and gender-neutral (RN) participation on ODOT projects, and the remaining 5.2% of the overall goal will need to be met through the use of race- and gender-conscious (RC) contract goals.

Overall DBE Goal FFY 2015 - 2016	13.1%
▪ RN Portion	7.9%
▪ RC Portion	5.2%

ODOT proposes to meet the race- and gender-conscious portion of the overall goal through the setting of DBE contract goals on select construction and architecture and engineering and related services (A&E) contracts. ODOT will set contract goals only for those groups determined eligible under the agency’s current, USDOT-approved DBE program waiver of the requirements in 49 CFR 26.45(h), as long as the waiver remains in effect. ODOT intends to initiate a request for a modified waiver in March 2015, and upon USDOT-approval, ODOT will set contract goals according to the modified waiver.

Currently, ODOT’s [2013 – 2015 DBE Program Waiver](#) permits those DBE presumptive groups that experienced substantial underutilization during ODOT’s [2011 Disparity Study Update Report](#) period to meet contract goals as follows:

Construction Contracting – Race-conscious contract goals apply to:

- (Black) African American-owned DBE firms, and
- Subcontinent Asian American-owned DBE firms

A&E Contracting – Race- and gender-conscious contract goals apply to:

- (Black) African American-owned DBE firms,
- Subcontinent Asian American-owned DBE firms,
- Native American-owned DBE firms,
- Hispanic American-owned DBE firms, and
- Non-minority women-owned DBE firms

All participation by DBEs other than those groups listed above, and all DBE participation not used to meet contract goals will be considered race- and gender-neutral participation. ODOT

expects the majority of the overall goal to be met through participation on construction contracts and another substantial portion on A&E contracts. Historically, within these two business categories, approximately 80% of FHWA-funding is spent in construction and the other 20% in A&E contracting. ODOT expects future DBE participation across these business categories to be roughly commensurate with these percentages.

BACKGROUND:

In setting the overall annual goal for ODOT, the USDOT requires that the goal setting process begin with a base figure for the relative availability of DBEs. The overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on USDOT-assisted contracts. In particular, recipients must follow the USDOT's two-step methodology for goal setting to determine the level of DBE participation they expect absent the effects of discrimination:

- **Step 1** – Compute the base figure using data from one of the of the following options set out in 49 CFR 26.45(c) to determine relative availability: (1) DBE directories and census reports, (2) bidders list, (3) disparity study, (4) the goal of another DOT, or (5) other alternatives.
- **Step 2** – Adjust the base figure to make it as precise as possible utilizing the guidelines established in 49 CFR Part 26.45 and the [Tips for Goal-Setting](#) published by the USDOT's Office of Small and Disadvantaged Business Utilization.

In establishing this goal, ODOT is also required to do the following:

- Provide for public participation in the establishment of the overall goal;
- Specify the relevant market area used for the calculation;
- Project the portions of the overall goal it expects to be met through race- neutral and race-conscious measures, respectively (see 49 CFR Part 26.51).

On March 31 2014, ODOT proposed an annual DBE goal for FFY 2014 – 2016 of 12.29% with a race-neutral and race-conscious breakout of 9.61% and 2.68% respectively. In calculating the base figure, ODOT proposed to average certified DBE availability with “potential” DBE availability based on state minority- and women-owned business certification numbers (MBEs and WBEs). Finding averaging certified with potential DBEs to be too arbitrary a method to take into account potential DBEs, this methodology was not approved by FHWA. FHWA and ODOT exchanged comments, questions and responses regarding the proposed goal on May 21, October 16, and October 27, 2014 and met by conference call on December 10, 2014 to discuss the proposed goal. Per FHWA guidance, ODOT revised and resubmitted its goal calculation in February 2015, taking into account potential DBEs by estimating the rate by which DBE certifications will change during the goal period. However, in March 2015 FHWA expressed concerns that the estimated rate of change took into account a larger pool of certified DBEs than those considered available according to ODOT's 2013 Availability Update Report. ODOT has therefore revised the goal calculation report and proposes the methodology set out below. The calculation takes into account the full percentage of potential DBEs considered available in ODOT's 2013 Availability Update Report.

GOAL SETTING METHODOLOGY:

A. DBE AVAILABILITY: STEP 1 – DETERMINATION OF BASE FIGURE – 49 CFR 26.45(C)(3)

Method Selected – Sources of Data: After considering the options under 49 CFR 26.45(c), ODOT determined it would use options (3) to determine DBE relative availability. Option (3) provides that a recipient may use a percentage figure derived from a valid, applicable disparity study to determine the base figure of DBE relative availability. The source of ODOT's proposed base figure is derived from the relative DBE availability calculated by disparity study consultants, MGT of America, Inc. in a [2013 Availability Update](#) report, which provides a limited update to ODOT's [2011 Disparity Study Update](#) report.¹

In 2011, ODOT contracted with MGT to provide a 2011 Disparity Study Update report on DBE, minority-owned, and women-owned business availability, utilization, and disparity in ODOT contracting data. In 2013, ODOT reengaged MGT of America on a very limited basis to provide a 2013 Availability Update on DBE and minority and women-owned businesses in the primary business categories that receive FHWA funding: highway construction and architecture and engineering and related services.² With respect to data used from the 2013 Availability Update report, this revised goal calculation relies upon the *Certified plus Potential* DBE data shown in Exhibit 2-11, *Comparison of DBE and Potential DBE Firms by Business Category* (p. 2-14) and Appendices A through C.

For the 2013 Availability Update, MGT analyzed the following sources of data: (1) From ODOT Office of Civil Rights: construction prime and subcontract award information, prime and sub-bidders lists, and architecture and engineering subcontractor information; and (2) From the ODOT Purchasing and Contract Management System database: architecture and engineering prime contractor and bidder information. MGT also collected a list of firms currently certified as DBE, Minority-owned Business Enterprise (MBE), and Women-owned Business Enterprise (WBE) by the Oregon Office of Minority, Women, and Emerging Small Business (OMWESB). Section 2.4 of the 2013 Availability Update includes a more detailed description of MGT's data collection and management processes (p. 2-3). See also, section 4.4 of the 2011 Disparity Study Update (p. 4-4).

For purposes of the 2013 Availability Update by MGT, *potential DBEs* are those vendors in the ODOT-provided vendor data import file and the OMWESB certification list that were certified as MBE or WBE, were not already certified as DBE, and were not otherwise identified as unavailable. Unavailable firms include firms that were identified by ODOT as having gone out of business, being ineligible to participate in Oregon public contracts, or being ineligible for certification in the DBE program. Examples of ineligible firms include contractors on the BOLI list of ineligible contractors and recently de-certified firms. See the appendices of the [2013 Availability Update](#) report for a complete listing of Availability Details, Potential DBEs, and Certified DBEs shown by business name for ODOT's construction and A&E business categories.

¹ ODOT's disparity and availability reports are posted on the DBE Program webpage, *available at*: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_disp_avail_stud.aspx, last visited March 26, 2015.

Relevant Market Area in Primary Business Categories: The relevant market area was determined to be Oregon and the Portland Metropolitan Statistical Area (MSA), which includes Clark and Skamania counties in Washington State. This determination is based upon the market area analysis in Section 2.5 of the 2013 Availability Update, which is based on the analysis included in Section 4.5 (p. 4-7) and the expenditure information in Exhibit 4-0 (p. 4-6), Exhibit 4-2 (p. 4-11), and Exhibit 4-11 (p. 4-25) of the 2011 Disparity Study Update. Overall, the 2011 Update shows ODOT expends a substantial majority of contracting dollars within the State of Oregon (and Portland MSA), particularly in the Construction (95.85%) and A&E (92.43%) contracting business categories. According to Exhibits, 4-0, 4-2 and 4-11 of the 2011 Update, at 93.3%, ODOT expends the majority of its *prime contract* dollars in these two primary business categories. The percentage of construction and A&E spending during 2011 Update report period was calculated as follows:

- \$1,349,447,308 construction + \$343,930,706 A&E = \$1,693,378,014 Primary Business Category
- \$1,693,378,014 Primary Business Category / \$1,814,214,817 Total Contracting = 93.3%

ODOT expects the percentage of future spending in these business categories to remain fairly consistent with past spending levels.

Base Figure Calculation:

1. **Availability:** In calculating the Step-1 Base Figure, ODOT uses the certified plus potential DBE availability from the 2013 Availability Update report identified by prime- and sub-contractor levels of participation in the Construction Contracting and A&E Contracting business categories. See Exhibit 2-11 in the 2013 Update (p. 2-14). Table 1 below summarizes the certified plus potential DBE availability.

**TABLE 1:
Certified + Potential DBE Availability**

Level	Construction	A&E
Prime	10.0%	25.8%
Sub	20.0%	27.0%

2. **Weighting by Contractor Participation Level:** Next, the certified plus potential DBE availability figures in each business category are weighted by prime- and sub-contractor levels of participation. The percentages for calculating weight by contractor levels are based on historical prime- and sub-contractor-retained award data from the 2011 Disparity Study Update report.

Prime-retained dollars were determined by subtracting the amount awarded to subcontractors from the amount awarded to primes (Prime Award \$ - Sub Award \$ = Prime-retained \$). The prime participation percentage was then calculated by dividing the prime-retained dollars figure by the total amount awarded to primes in each business category (Prime-retained \$ / Prime Award \$ = Prime Participation %). The subcontractor percentages

were determined by subtracting the prime percentages from 100 percent (100% - Prime % = Sub %). See ODOT’s 2011 Disparity Study Update for the following supporting data:

- **Construction Contractors:** Exhibit 4-3 (p. 4-13) shows \$1,293,443,968 in prime contractor awards, and Exhibit 5-1 (p. 5-3) shows \$546,163,865 in subcontractor awards. Thus,
 - Prime Awards \$1,293,443,968 – Sub Awards \$546,163,865 = Prime-retained Dollars \$747,280,103;
 - Prime-retained Dollars \$747,280,103 / Total Prime Awards \$1,293,443,968 = **57.77% Prime Participation;** and
 - 100% - 57.77% = **42.23% Subcontractor Participation.**
- **A&E Contractors:** Exhibit 4-12 (p. 4-26) shows \$317,887,311 A&E prime contractor awards, and Exhibit 5-16 (p. 5-20) shows \$42,609,592 A&E subcontractor awards. Thus,
 - Prime Awards \$317,887,311 – Sub Awards \$42,609,592 = Prime-retained Dollars \$275,277,719;
 - Prime-retained Dollars \$275,277,719 / Total Prime Awards \$317,887,311 = **86.60% Prime Participation;** and
 - 100% - 86.60% = **13.40% Subcontractor Participation.**

Over the FFY 2015 – 2016 goal period, ODOT anticipates prime- and sub-contractor participation levels to remain consistent with past participation levels during the 2011 Update period. The formula for weighting by contractor participation levels is:

➤ **[(DBE Prime Availability) x (Percent of Prime-retained dollars)] + [(DBE Sub Availability) x (Percent of Sub dollars)] = DBE Availability**

Table 2 below shows DBE availability (certified plus potential) weighted by contractor participation levels in the Construction and A&E business categories.

**TABLE 2:
DBE Availability by Business Category
Weighted by Contractor Participation Level***

Level	Construction				A&E					
Prime	10.0%	x	57.8%	=	5.8%	25.8%	x	86.6%	=	22.3%
Sub	20.0%	x	42.2%	=	8.4%	27.0%	x	13.4%	=	3.6%
DBE Availability					14.2%					26.0%

**Formula: [(DBE Prime Availability) x (Percent of Prime-retained dollars)] + [(DBE Sub Availability) x (Percent of Sub dollars)] = DBE Availability*

3. Weighting by Business Category: Finally, to arrive at the Step-1 Base Figure, the DBE Availability is further refined by weighting it by the relative percentage of dollars spent in each primary business category in the relevant market area. The percentages for calculating weight by business category are based on historical spending data as shown in the 2011 Disparity Study Update. Exhibit 4-3 shows \$1,293,443,968 in construction spending and Exhibit 4-12 shows \$317,887,311 in A&E spending, for a total of \$1,611,331,279 spending in

ODOT’s primary business categories (pp. 4-13 and 4-26). Construction represents 80.3% of spending, while A&E represents 19.7%. The percentage of spending in each primary business category is calculated as follows:

- Construction \$1,293,443,968/Total \$1,611,331,279 = 80.3%, and
- A&E \$317,887,311/Total \$1,611,331,279 = 19.7%.

ODOT anticipates spending by business category to be similar over the FFY 2015 - 2016 goal period. Table 3 below shows the total of DBE availability weighted by the percent of spending in each business category.

**TABLE 3:
Total DBE Availability Weighted by Business Category***

Business Category	DBE Availability	Business Category Spending Weight	Weighted DBE Availability
Construction	14.2%	80.3%	11.4%
A&E	26.0%	19.7%	5.1%
Total DBE Availability			16.5%

**Formula: [(DBE Availability Construction x Percent Spent in Construction) + (DBE Availability A&E x Percent Spent in A&E)] = Total DBE Availability*

Step-1 Base Figure = 16.5%

B. STEP 2 – ADJUSTMENTS TO BASE FIGURE – 49 CFR 26.45(D)

The regulations require that after the base figure is calculated, ODOT must consider available evidence to determine whether the figure should be adjusted higher or lower than the base figure. In determining whether to adjust the base figure, ODOT considered past DBE participation for the last five federal fiscal years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), projected federal aid project levels, certification volume, and financial barriers affecting DBEs.

Median Past Participation: ODOT researched the DBE participation levels on federal-aid contracts executed in the last five federal fiscal years to determine median past participation. This data is taken from the DBE Commitments/Awards section in ODOT’s annual [Uniform Report of DBE Commitments/Awards and Payments](#) submitted to FHWA.

Overall DBE Participation – Last 5 Years	
2010	9.6%
2011	15.1%
2012	10.4%
2013	9.0%
2014	8.7%
Median	9.6%

Because the Base Figure calculated in Step-1 (16.5%) is significantly higher than the five-year median past participation figure (9.6%), ODOT proposes a Step-2 adjustment to the Step-1 base figure based on past participation levels. According to the USDOT Tips for Goal Setting, this is determined by averaging the Step-1 Base Figure with the five-year median past participation figure as follows:

$$\frac{\text{Base Goal calculated in Step 1 + Median achievement past 5 years}}{\text{Divide by 2}} = \text{Goal}$$

Thus, the Step-1 Base Figure of 16.5% is averaged with the five-year median past participation figure of 9.6% as follows:

$$(16.5\% + 9.6\%) / 2 = 13.1\% \text{ Goal}$$

Other DOT Disparity Studies: ODOT acknowledges that Idaho Transportation Department (IDT) completed a disparity study in 2013³, and both Washington State Department of Transportation (WSDOT)⁴ and California Department of Transportation (CalTrans)⁵ each completed a disparity study in 2012. However, in light of the directly relevant ODOT 2011 Disparity Study Update and 2013 Availability Update, the agency declines to make any adjustment to the goal based on these other DOT disparity studies.

City of Portland Disparity Study: As part of the agency's FFY 2013 overall goal calculation, ODOT reviewed and considered the [City of Portland's 2009 Disparity Study](#). This consideration likewise applies to this 2014 – 2016 DBE goal calculation. The Portland study found disparities in construction contracting with the City and the Portland Development Commission. It found that City programs that encouraged MBE and WBE utilization were generally successful, but there were disparities in contracting when no race- or gender-conscious measures were in place. The study provided statistical data and findings that access to credit, financing, and other barriers affect MBE and WBE business opportunities, which impacts business growth and capacity. Although Portland is in ODOT's relevant market area and there is likely cross-over in DBE firm availability in both construction and A&E contracting, ODOT's contracting opportunities are primarily in horizontal construction, while Portland's contracting opportunities include more vertical construction, which could impact the availability analysis. Furthermore, DBEs that work on FHWA-funded projects for the City of Portland are also accounted for in ODOT's 2011 and 2013 disparity and availability update reports. Thus, it would be difficult to quantify how Portland's study findings should affect ODOT's DBE goal. Therefore, ODOT will not make an adjustment to this DBE goal on the basis of Portland's study.

Projected Federal Aid Share Projects for FFYs 2014 – 2016: To project the value of projects during the FFYs 2014 – 2016 period, ODOT's Program and Funding Services Unit collated data from ODOT's Final 2012 - 2015 [Statewide Transportation Improvement Program \(STIP\)](#) and the Draft STIP 2015 – 2018 documentation. ODOT forecasts FHWA-funded costs totaling

³ ITD, 2013 Disparity Study, available at: <http://itd.idaho.gov/civil/disparity2013.htm>, last visited, March 30, 2014.

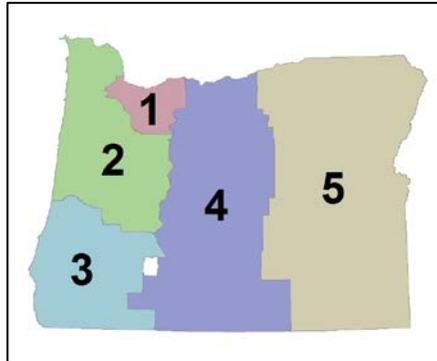
⁴ WSDOT, 2012 Disparity Study, available at: <http://www.wsdot.wa.gov/EqualOpportunity/DisparityStudy/default.htm>, last visited, February 10, 2015.

⁵ CalTrans, 2012 Disparity Study, available at: http://www.dot.ca.gov/hq/bep/disparity_study.htm, last visited, March 30, 2014.

\$596,596,265 for 2014 and 2015. For 2016, ODOT estimates total project costs of \$335,100,000, with the majority of those costs being FHWA-funded. (Note: These are estimated “costs” not estimated contracting values, and include costs to the agency and/or local government.) No Step-2 adjustment will be made based on funding levels or funding type.

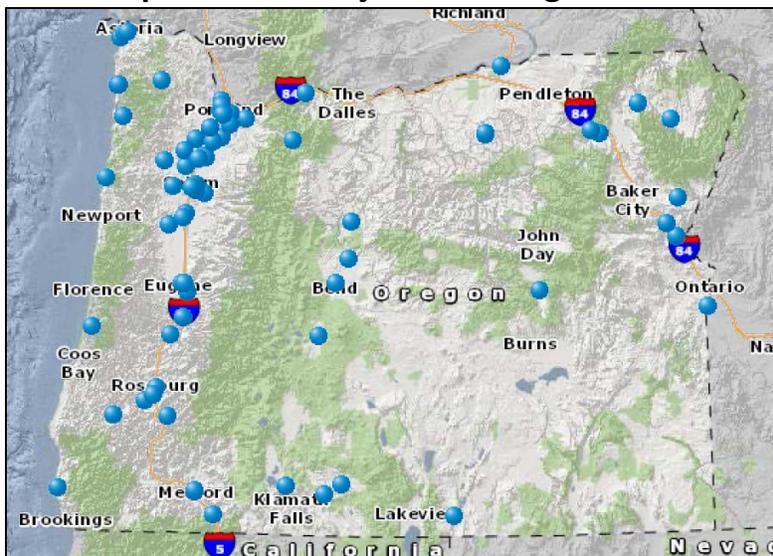
Project Location: The location of future projects was also taken into consideration. ODOT is divided in five regions. Regions 1, 2 and 3 are geographically within the western half of the state, from the Cascade Range to the Pacific Ocean and from the Oregon-Washington border in the north to the Oregon-California border in the south (see, Map 1 below).

**Map 1:
ODOT Regions**



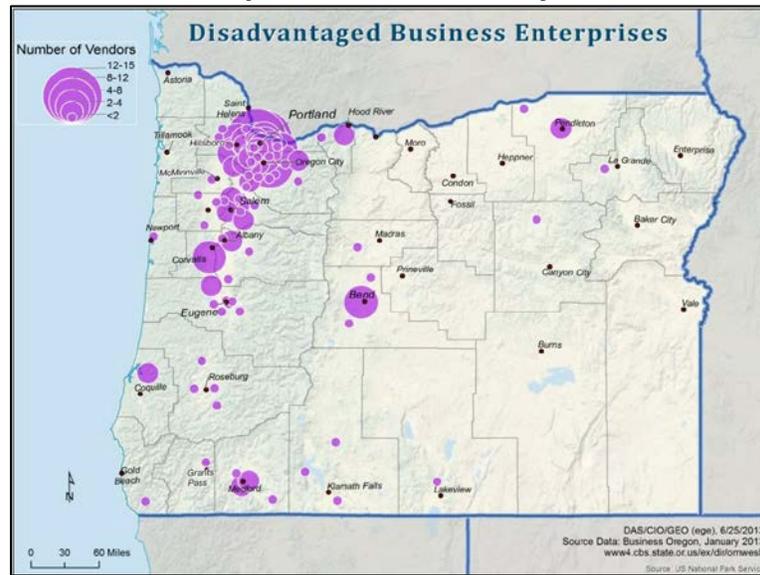
The majority of projects forecasted in the STIP are located within ODOT’s Region 1 or 2, with a moderate number in Region 3, and fewer projects in Regions 4 and 5 (see, Map 2, below). The majority of DBEs available are also located in the same geographic areas where the majority of projects are located (see and compare, Map 3 to Map 2, below). Based on this information, any adjustment to the overall goal would not be based on project location.

Map 2: ODOT Projects in Design Phase*



* Data as of March 2014. Graphic from the Oregon Project Tracking map available at: <https://gis.odot.state.or.us/OPT/>. It displays how and where transportation funds are spent. The projects listed are part of the STIP. Most state-managed projects are shown, but OTIA III Bridge Program projects, emergency repairs, and city and county managed projects (which are also concentrated in Regions 1, 2, and 3), are not included at this time.

Map 3: DBE Availability**



** Data as of January 2013. Graphic from Gov’s Office of Econ. & Bus. Equity, 2012 Annual Report, pg. 16, available at: http://www.oregon.gov/gov/MWESB/docs/2012_Annual_Report.pdf.

Capacity: With respect to contractors, suppliers and service providers, the capacity is clearly there for them to participate in a meaningful manner. Gross receipt information supplied by most commonly utilized DBE firms during a 2009 capacity study shows that DBEs have the capacity to perform a proportionate amount of the projected work.⁶

DBE Certification Volume: On June 20, 2012, the total number of certified DBE firms in Oregon was 540. On March 30, 2014, the total number of certified DBE firms was 541. And as of February 17, 2015 there are 597 firms certified as DBEs in Oregon.⁷ For the last few years, there have been only minor fluctuations up and down in all types of DBE certification, with a modest rise in the number of certifications in the last year. Because the Step-1 calculation in Section A of this report already accounts for potential DBEs in ODOT’s relevant market, this FFY 2015 - 2016 goal will not be further adjusted based on certification volume.

Access to Credit, Financing, and Other Barriers: During the previous fiscal year, there were no formal complaints, claims, or lawsuits filed with ODOT Office of Civil Rights alleging discrimination or disparity in bonding or financing. The ODOT 2011 Disparity Study Update provided anecdotal information indicating that access to credit, financing, and bonding capacity are barriers that affect the ability of DBEs to form, grow, and compete. The City of Portland 2009 Disparity Study also included statistical data that shows disparity in access to credit and financing and provides analysis that indicates this disparity negatively impacts minority-owned firms. Yet, it is difficult to quantify how the findings in either disparity study should affect

⁶ Mason Tillman Associates, [State of Oregon Department of Transportation Contracting Capacity Analysis--Region 1, June 2009](#), p. 1-2.

⁷ Note: The *total number of certified DBEs* is not the same figure used to calculate *certified DBE availability* for ODOT transportation contracting in Step-1. Certified DBE availability also takes into account a firm’s types of work and location within the relevant market area.

ODOT's overall DBE goal. Thus, the FHWA-approved FFY 2013 was not adjusted, nor will the FFY 2015 - 2016 goal be adjusted based on access to credit and financing and other barriers to DBEs doing business with ODOT.

As an alternative to making any further Step-2 adjustments, ODOT will continue to actively pursue supportive service options that assist DBEs and other small businesses gain access to financing and build bonding capacity. To support small businesses who are seeking state and local transportation constructing opportunities, ODOT is partnering with the USDOT – Northwest Small Business Transportation Resource Center (SBTRC), the Governor's office, local public agencies, prime contractors and the Oregon Association of Minority Entrepreneurs in bringing both a Short Term Lending Program and a Bonding Education Program to Oregon. ODOT worked with the Northwest SBTRC and stakeholders to bring the Bonding Education Program to Portland in October 2012 and to Salem in October 2013, and is working with them again to bring a follow-up Bonding Education Program workshop to Portland in 2015.

FFY 2015 - 2016 Goal Determination: Taking the above information into consideration, ODOT has established a **13.1% DBE Goal** for FFY 2015 - 2016. The goal is based on current availability of ready, willing, and able DBEs, including potential DBEs, as calculated in Step-1 above, with a downward Step-2 adjustment based on median past participation levels from the last five years.

C. RACE AND GENDER NEUTRAL AND CONSCIOUS MEASURES – 49 CFR 26.45(e) and (h), and 26.51

RN/RC Breakout: The USDOT regulations require that the maximum feasible portion of the DBE overall goal be met by using race- and gender-neutral (RN) measures. Where the projected portion of the goal using race- and gender-neutral measures is less than the overall annual goal, the remaining portion is expected to be achieved by establishing contract goals on select projects that have subcontracting opportunities, or race- and gender- conscious (RC) measures. Additionally, the federal Ninth Circuit indicated in its 2005 *Western States Paving Co., Inc. v. Washington State DOT* decision that to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious measures to those minority groups “that have actually suffered discrimination” within its transportation contracting industry.⁸

To project the portion of the overall goal the agency expects to achieve through race- and gender-neutral measures, ODOT analyzed race- and gender-neutral DBE participation levels from the last five federal fiscal years. These percentage figures are calculated from the data in the DBE Commitments and Awards section of ODOT's annual [Uniform Report of DBE Commitments / Awards and Payments](#) submitted to FHWA for each year listed.

⁸ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

RN DBE Participation – Last 5 Years	
2010	7.9%
2011	13.2%
2012	9.6%
2013	5.1%
2014	7.1%
Median	7.9%

Thus, the proposed race- and gender-neutral portion of ODOT’s proposed goal was determined by identifying the median race- and gender-neutral DBE participation from the last five years, which is 7.9%. The race- and gender-conscious portion was then determined by subtracting the race- and gender-neutral portion of 7.9% from the proposed overall of 13.1% as follows: 13.1% - 7.9% = 5.2%.

Overall DBE Goal FFY 2015 - 2016	13.1%
▪ RN Portion	7.9%
▪ RC Portion	5.2%

Waiver Applicability: To meet the narrow tailoring standards established in the *Western States Paving* case, ODOT proposes to meet the race- and gender-conscious portion of the overall goal by setting DBE contract goals on select Construction and A&E contracts in accordance with ODOT’s USDOT-approved [2013 – 2015 DBE Program Waiver](#) from the requirements in 49 CFR 26.45(h), as long as the waiver remains in effect. ODOT intends to initiate a request for a modification to the current waiver in March 2015, and upon USDOT-approval, ODOT will set contract goals according to the modified waiver.

Currently, ODOT’s waiver permits those DBE presumptive groups that experienced substantial underutilization during ODOT’s [2011 Disparity Study Update Report](#) period to meet contract goals as follows:

Construction Contracting – Race-conscious contract goals apply to:

- (Black) African American-owned DBE firms, and
- Subcontinent Asian American-owned DBE firms

A&E Contracting – Race- and gender-conscious contract goals apply to:

- (Black) African American-owned DBE firms,
- Subcontinent Asian American-owned DBE firms,
- Native American-owned DBE firms,
- Hispanic American-owned DBE firms, and
- Non-minority women-owned DBE firms

All participation by DBEs other than those groups listed above, and all DBE participation not used to meet contract goals will be considered race-neutral participation. ODOT expects the majority of the overall goal to be met through participation on construction contracts and

another substantial portion through participation on A&E contracts. DBE participation in all other business categories will be achieved through race-neutral measures.

D. PUBLIC PARTICIPATION – 49 CFR 26.45(g), 26.15(b)(1)

Published Notice: On June 17, 2013 ODOT initially published a Public Notice proposing a goal of 14.68%, but due to the need to further review and refine the data, the notice was withdrawn on July 2, 2013.

On February 14, 2014, ODOT posted a [Public Notice](#) of the revised proposed annual goal of 12.29% for FFYs 2014 – 2016 on the OCR webpage. The notice informed the public that the proposed goal and its rationale were available for inspection during normal business hours in ODOT Office of Civil Rights for 30 days. The notice identified a comment period of 45 days beginning on February 14th and ending March 31st and included email, fax, and postal address information. The notice stated ODOT would incorporate any comments received into the goal methodology document and that ODOT would submit the proposed goal and rationale to FHWA by March 31, 2014 for review. The notice also identified that race conscious measures will be implemented consistent with any USDOT waiver currently in effect. Finally, the notice announced two public meeting dates, one in Salem on March 11th and another in Portland on March 18th.

On February 18, a description of the basis for the goal, the [Summary Rationale](#) document, including a link to the updated availability data report was posted to the OCR webpage. On February 18 and 19, OCR also emailed the goal notice to all DMWESB firms certified in the construction and A&E NAICS, to the Association of General Contractors (AGC – Oregon Columbia Chapter), the American Council of Engineering Companies (ACEC – Oregon), various chambers of commerce, women and minority advocacy organizations, the Governor’s Director of Economic and Business Equity, and to FHWA Oregon Division.

Between February 19 and March 3, the Public Notice was circulated in the following Oregon newspapers, including minority and trade papers: Bend Bulletin, El Latino de Hoy, Eugene Register-Guard, Medford Mail Tribune, Portland Daily Journal of Commerce (DJC), Portland Oregonian, Salem Statesman Journal, The Asian Reporter, The Portland Observer, and The Skanner. Also, on February 19, OCR forwarded the email notice to internal stakeholders to be shared across the state with networks. Finally, on March 4 and 17, OCR sent out public meeting reminders to certified firms and industry stakeholders by email.

Public Participation and Consultation Activities: In establishing an overall goal, ODOT must provide for public participation. This includes consultation with minority, women and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the agency’s efforts to establish a level playing field for the participation of DBEs. As part of the 2013 Availability Update process, MGT solicited firm availability information from external stakeholder groups, including women and minority business organizations.

On-going Outreach: Additionally, each year ODOT engages in discussion with DBEs, MBEs, WBEs, other prime and subcontractors, and various stakeholder organizations regarding the DBE program, including the overall goal and contract goals, at outreach and training events across the state. Over the last year ODOT participated in the following, non-exhaustive list of events and initiatives:

- A&E Goal Setting Committee (April 2012 – March 2013)
- ACEC-ODOT Liaison and Steering Committee Meetings (A&E Industry)
- ODOT Industry Leadership Committee Meetings (Construction)
- Oregon Local Programs Committee (OLPC)
- ACEC Conference (April 4, 2013)
- AGC Conference (February 2, 2013)
- National Association of Women in Construction (NAWIC) – Salem (June 2013) and Portland (January 2014)
- National Utility Contractors Association (NUCA) (October 2013)
- Hispanic Chamber Meet & Greets (January and March 2013)
- Hispanic Chamber Employment & Business Fair (June 2013)
- Our Native American Business Enterprise Network (ONABEN) Fair – Bend (April 2013)
- Governor’s Market Place – Salem (April 17, 2013)
- Governor’s Road Show – 13 cities, statewide (July – November, 2013)
- Oregon Association of Minority Entrepreneurs (OAME), monthly contractors meetings
- Civil Rights Manager and Director meeting with Chair Cano and small business owners from the Latino community to discuss DBE goal and waiver (February 6, 2013)
- Development and Publication of [ODOT’s DBE FAQs](#) – Provided opportunity to stakeholders to submit questions or comments on the draft document. Final documents were published in May 2013 and presented to stakeholders at construction and A&E industry leadership meetings.
- Mandatory Pre-Bid Meetings for select projects with contract goals, with question and answer opportunity regarding goals.
 - US26: MP 49.2 to MP 57.45 (Mt. Hood), 10/29/2013
 - FFO – I-5: Fern Valley Interchange Unit 2 (Phoenix), 10/02/2013
 - FFO – OR212/224: Sunrise Corridor (I-205 – SE 122nd Ave, Portland), 02/26/2013
 - OR8: Minter Br Rd - SW 331st Ave (Hillsboro), 02/01/2013

Public Meetings and Comments: Finally, ODOT held two public meetings, one in Salem on March 11, 2014 and another in Portland on March 18, 2014 to present information about the proposed DBE goal and to hear public comments on the goal. The Salem meeting was attended by four members of the public, including, two DBEs and two prime contractors. The Portland meeting was attended by approximately 35 interested parties in person and by webinar, including mostly DBEs (both construction and A&E), a few prime contractors, a few minority organization representatives, an FHWA representative, and several agency staff members. The [presentation slides](#) have been posted to the OCR webpage.

ODOT received numerous oral comments and several written comments at the public meetings and during the comment period. Some DBE commenters expressed concerns over the

methodologies used in the goal calculation. However, no specific alternative methodologies for calculating the goal were offered. One commenter indicated during the public meeting that DBE prime and low-bid participation should not be taken into account when setting the goal. ODOT responded that the narrow tailoring requirements of the DBE program require the agency to meet the overall goal through race- and gender-neutral measures to the maximum extent feasible, and that DBE prime and low-bid sub participation are race- and gender-neutral measures. Some DBE and DBE-advocate commenters acknowledged the proposed goal calculation was logical and that they understood the mathematical reasoning, but they still disagreed with the rationale on the basis that math and logic alone does not take into account other less tangible factors.

There were several comments on behalf of African American DBEs that the goal should be much larger, because even with the existing goals some African American DBEs are still not winning work on ODOT projects. One commenter indicated a belief that ODOT's DBE program has been poorly run for years; that there has been significant fraud in the program; and that ODOT should take this into account by setting a higher overall goal. The commenter added that ODOT needs to monitor DBE compliance. ODOT responded that the agency has implemented statewide training on program monitoring and compliance and has implemented several new forms and processes to ensure better compliance. A DBE commented that in their experience, ODOT has been actively monitoring DBE compliance, as their firm has undergone commercially useful function reviews on all their recent projects. A couple of commenters thought the DBE goal should be higher to account for DBEs that have been decertified. ODOT explained that decertification of DBEs results in lower relative availability rather than higher availability and would likely result in a lower goal rather than a higher goal. A non-minority small business owner agreed the goals should be much higher and that ODOT should do more in general to reduce contracting barriers with the agency, particularly in A&E contracting. Other commenters agreed that ODOT should continue to do more to reduce barriers to participation in ODOT contracting. One commenter identified that ODOT's projects are too large for many DBEs to participate as prime contractors. ODOT responded to this comment by stating ODOT has many projects in \$100,000 to \$1 million range. ODOT also identified the upcoming project schedule and [Upcoming Project Search](#) tool located on the OCR webpage.

Several non-minority prime and DBE commenters expressed concerns over an increase in the use of DBE fuel and asphalt suppliers to meet contract goals and expressed concerns over how this may impact the overall goal. ODOT responded that, while the agency understands these concerns and encourages a broad range of DBE participation, the DBE program regulations allow for fuel and asphalt supplier participation. ODOT also stated that the reduced 60% credit for DBE regular dealer suppliers appears to be intended as a way to limit to how much supplier participation can count toward meeting the goal.

One written comment from a non-minority prime contractor indicated that the DBE program is inherently discriminatory and is so administratively burdensome, ODOT should decline to take USDOT-assistance and do away with ODOT's DBE program altogether. The commenter stated that government programs to assist with business development are one thing, but that any assistance should end at the time of bid submission, because to do otherwise is to have set-asides for designated classes of businesses. The agency has no plans to decline federal funds or

to do away with ODOT's DBE program. In calculating both this overall goal and in assigning DBE contract goals, the agency sets goals that allow opportunities for waiver-eligible DBEs, other DBEs, and non-DBEs to participate as prime and subcontractors.

Many of the concerns raised by DBE and non-DBE commenters alike related more directly to the 2011 Disparity Study and the waiver effects than to the proposed overall goal or to the availability data used to calculate the goal. Several non-minority prime construction contractors who offered oral comments at other stakeholder events indicated the goal was high, but would be more achievable if all DBE groups were eligible to meet hard contract goals. Several commenters, particularly Hispanic, Native American, and Women-owned DBEs, raised concerns over potential impacts the race-conscious portion may have on DBE groups not eligible to participate in contract goals. Several DBEs shared concerns that a few DBEs in one minority group who successfully bid as primes or win substantial subcontract work skew the participation numbers for the rest of a group. ODOT will be addressing these concerns by evaluating the apparent impacts the waiver has on DBE groups currently ineligible to participate on contract goals and by requesting a modified waiver according to more recent contract award data.

ODOT has also engaged a consultant, Keen Independent Research to conduct a [2016 ODOT Disparity Study](#) to analyze recent DBE utilization data and evaluate the concerns identified by our stakeholders. The agency and consultant team have planned numerous opportunities for public input on the study, including two series of statewide public meetings, convening an External Stakeholders Group, providing a dedicated project website, e-mailbox, and telephone hotline, and conducting contractor availability surveys and in-depth stakeholder interviews. Based on early interest, ODOT anticipates robust stakeholder participation throughout the disparity study process.

After considering public comments, ODOT determined it would submit the 12.29% DBE goal with a RN portion of 9.61% and RC portion of 2.68% as proposed in the public notice and at the public meetings to FHWA for review and approval. Once submitted to FHWA in March 2014, the agency provided periodic updates on the goal review process at various stakeholder meetings, including monthly ODOT Industry Leadership Team meetings and bi-monthly ACEC-Liaison Industry meetings. In December 2014, ODOT notified these groups that FHWA declined to approve the certified DBE / potential DBE averaging methodology ODOT proposed in March 2014 and that ODOT was working with FHWA to revise the goal calculation.

Once FHWA approves ODOT's overall goal, ODOT will notify stakeholders by posting the approved goal calculation report to the ODOT DBE Program – Annual Goal web page. The agency will also announce the approved goal information through email listserv and at various stakeholder meetings.

CONCLUSION:

As in past years, ODOT will continue to advise prospective contractors on areas of possible subcontracting and of the availability of ready, willing and able subcontractors, including DBE firms, to perform such work. ODOT will carefully monitor its progress during the course of each

federal fiscal year and will adjust race- and gender-conscious goal setting if race- and gender-neutral methods appear to be achieving the 13.1% overall annual DBE participation goal for that year. ODOT will set construction and A&E contract goals in accordance with the agency's USDOT-approved [2013 – 2015 DBE Program Waiver](#), as long as the waiver remains in effect. Should a modified waiver be approved by the USDOT and go into effect during FFYs 2015 – 2016 goal period, ODOT will modify its contract goal setting practices accordingly. ODOT will continue to closely monitor DBE participation for all presumptive groups to identify any trends indicating an increase or decrease in utilization. In addition to monitoring goals performance, the agency will continue seeking new and innovative ways to provide supportive services geared toward growing small business firms, including DBEs.

- APPENDIX: Data Tables -

2013 ODOT Availability Study Update Report
MGT of America, Inc.

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/sbe/dbe/docs/ODOT_Availability_Study_Update_Final_092613.pdf

Exhibit 2-11, Page 2-14

EXHIBIT 2-11
COMPARISON OF CERTIFIED DBE AND POTENTIAL DBE FIRMS
BY BUSINESS CATEGORY

Construction Prime DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Prime Certified DBE	32	7.31	406	92.69	438
Prime Potential DBE	13				
Certified + Potential DBE	45	10.00	393	90.00	438

Construction Sub DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Sub Certified DBE	137	16.25	706	83.75	843
Sub Potential DBE	32				
Certified + Potential DBE	169	20.00	674	80.00	843

A&E Prime DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Prime Certified DBE	17	13.71	107	86.29	124
Prime Potential DBE	15				
Certified + Potential DBE	32	25.81	92	74.19	124

A&E Sub DBE	DBE Count		Non-DBE Firms		Total Firms
	#	%	#	%	
Sub Certified DBE	38	20.54	147	79.46	185
Sub Potential DBE	12				
Certified + Potential DBE	50	27.03	135	72.96	185

ODOT
2011 ODOT Disparity Study Update Report
MGT of America, Inc.

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/sbe/dbe/docs/DisparityUpdate2011_FinalReport.pdf

Exhibit 4-0, Page 4-6

EXHIBIT 4-0
ODOT
TOTAL OVERALL FEDERAL DOLLARS SPENT
AND NUMBER OF ANALYZED AWARDS
BY BUSINESS CATEGORY
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010

Business Category	\$	# of Awards
Construction	\$1,349,447,308.00	374
Construction Subcontracts	\$546,163,865.00	3,267
Architecture and Engineering	\$343,930,706.12	939
Architecture and Engineering Subconsultants	\$42,609,592.54	711
Professional Services	\$54,408,507.65	219
Trade Services	\$23,561,976.80	103
Goods and Supplies	\$42,866,317.50	5
Total	\$2,402,988,273.61	5,618

Source: Procurement activity compiled from ODOT data.

2011 ODOT Disparity Study Update: Exhibit 4-2, Page 4-11

EXHIBIT 4-2
CONSTRUCTION
RELEVANT MARKET AREA ANALYSIS
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010

County ¹ , State	# of Contracts	% of Contracts	# of Firms	% of Firms	Federal Dollars	% of Dollars	Cum% ²
MARION, OR	65	17.38%	17	14.66%	\$262,742,046.00	19.47%	19.47%
WASHINGTON, OR	27	7.22%	13	11.21%	\$68,433,187.00	5.07%	24.54%
DESCHUTES, OR	43	11.50%	10	8.62%	\$118,495,600.00	8.78%	33.32%
CLACKAMAS, OR	21	5.61%	10	8.62%	\$32,928,455.00	2.44%	35.76%
LANE, OR	38	10.16%	9	7.76%	\$458,820,530.00	34.00%	69.76%
MULTNOMAH, OR	15	4.01%	7	6.03%	\$29,020,914.00	2.15%	71.91%
JACKSON, OR	30	8.02%	6	5.17%	\$45,237,002.00	3.35%	75.27%
UNION, OR	6	1.60%	4	3.45%	\$8,467,512.00	0.63%	75.89%
LINN, OR	24	6.42%	3	2.59%	\$46,130,487.00	3.42%	79.31%
DOUGLAS, OR	9	2.41%	3	2.59%	\$32,284,858.00	2.39%	81.70%
JOSEPHINE, OR	8	2.14%	2	1.72%	\$11,003,873.00	0.82%	82.52%
WASCO, OR	4	1.07%	2	1.72%	\$4,148,299.00	0.31%	82.83%
CLATSOP, OR	5	1.34%	2	1.72%	\$3,847,490.00	0.29%	83.11%
YAMHILL, OR	22	5.88%	1	0.86%	\$92,425,895.00	6.85%	89.96%
CURRY, OR	11	2.94%	1	0.86%	\$32,344,585.00	2.40%	92.36%
UMATILLA, OR	2	0.53%	1	0.86%	\$5,359,131.00	0.40%	92.76%
BENTON, OR	1	0.27%	1	0.86%	\$1,986,992.00	0.15%	92.90%
COOS, OR	1	0.27%	1	0.86%	\$1,445,665.00	0.11%	93.01%
KLAMATH, OR	1	0.27%	1	0.86%	\$998,655.00	0.07%	93.08%
COLUMBIA, OR	2	0.53%	1	0.86%	\$845,436.00	0.06%	93.15%
POLK, OR	1	0.27%	1	0.86%	\$470,411.00	0.03%	93.18%
HARNEY, OR	1	0.27%	1	0.86%	\$316,020.00	0.02%	93.21%
LINCOLN, OR	1	0.27%	1	0.86%	\$283,893.00	0.02%	93.23%
CROOK, OR	1	0.27%	1	0.86%	\$187,472.00	0.01%	93.24%
TILLAMOOK, OR	1	0.27%	1	0.86%	\$74,445.00	0.01%	93.25%
CLARK, WA	14	3.74%	8	6.90%	\$35,145,115.00	2.60%	95.85%
KING, WA	7	1.87%	3	2.59%	\$22,208,403.00	1.65%	97.50%
SANTA CRUZ, CA	8	2.14%	1	0.86%	\$16,951,949.00	1.26%	98.75%
SCOTT, MN	1	0.27%	1	0.86%	\$13,369,910.00	0.99%	99.74%
CHELAN, WA	2	0.53%	1	0.86%	\$2,392,482.00	0.18%	99.92%
IDAHO, ID	1	0.27%	1	0.86%	\$618,411.00	0.05%	99.97%
SANTA BARBARA, CA	1	0.27%	1	0.86%	\$462,185.00	0.03%	100.00%
Total	374	100.00%	116	100.00%	\$1,349,447,308.00	100.00%	

Source: Oregon Department of Transportation

¹ Counties above the line are included in the relevant market area.² Cumulative total of percent of dollars in market area.

**EXHIBIT 4-3
STATEWIDE
CONSTRUCTION CONTRACTS
UTILIZATION ANALYSIS OF PRIME CONTRACTORS IN THE RELEVANT MARKET AREA
DOLLARS AND PERCENTAGE OF FEDERAL DOLLARS AWARDED
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian SubContinent Americans		Asian Pacific Americans		Native American		Nonminority Women		MWBE Subtotal		NON-MWBE Firms		Total Federal Dollars Awarded
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2008	\$0	0.00%	\$9,154,140	1.79%	\$0	0.00%	\$0	0.00%	\$878,886	0.18%	\$19,900,132	3.89%	\$29,933,158	5.86%	\$481,257,718	94.14%	\$511,190,876
2009	\$0	0.00%	\$34,758,529	7.47%	\$0	0.00%	\$0	0.00%	\$1,963,129	0.46%	\$4,087,577	0.88%	\$40,809,235	8.77%	\$424,608,774	91.23%	\$465,418,009
2010	\$0	0.00%	\$11,074,529	3.50%	\$0	0.00%	\$0	0.00%	\$1,598,800	0.53%	\$4,001,080	1.26%	\$16,674,409	5.26%	\$300,160,674	94.74%	\$316,835,083
Total	\$0	0.00%	\$54,987,198	4.25%	\$0	0.00%	\$0	0.00%	\$4,440,815	0.34%	\$27,988,789	2.16%	\$87,416,802	6.76%	\$1,206,027,166	93.24%	\$1,293,443,968

Source: MGT developed a contract and vendor database for ODOT for the period of October 1, 2007, to September 30, 2010.
¹ Percent of total dollars awarded annually to prime contractors.

2011 ODOT Disparity Study Update: Exhibit 4-11, Page 4-25

EXHIBIT 4-11
ARCHITECTURE AND ENGINEERING
RELEVANT MARKET AREA ANALYSIS
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010

County ¹ , State	# of Contracts	% of Contracts	# of Firms	% of Firms	Federal Dollars	% of Dollars	Cum% ²
MULTNOMAH, OR	353	37.59%	34	32.69%	\$148,661,043.13	43.22%	43.22%
MARION, OR	196	20.87%	13	12.50%	\$72,989,183.57	21.22%	64.45%
WASHINGTON, OR	49	5.22%	10	9.62%	\$17,111,589.86	4.98%	69.42%
CLACKAMAS, OR	61	6.50%	9	8.65%	\$20,001,814.24	5.82%	75.24%
LANE, OR	171	18.21%	5	4.81%	\$46,285,573.39	13.46%	88.69%
BENTON, OR	14	1.49%	3	2.88%	\$8,352,395.52	2.43%	91.12%
UNION, OR	15	1.60%	3	2.88%	\$1,854,748.04	0.54%	91.66%
DOUGLAS, OR	3	0.32%	3	2.88%	\$30,552.00	0.01%	91.67%
DESCHUTES, OR	4	0.43%	2	1.92%	\$1,071,162.00	0.31%	91.98%
YAMHILL, OR	7	0.75%	2	1.92%	\$665,527.37	0.19%	92.18%
POLK, OR	5	0.53%	2	1.92%	\$195,000.00	0.06%	92.23%
LAKE, OR	2	0.21%	1	0.96%	\$660,281.44	0.19%	92.43%
JEFFERSON, OR	1	0.11%	1	0.96%	\$8,440.00	0.00%	92.43%
THURSTON, WA	9	0.96%	4	3.85%	\$9,189,132.04	2.67%	95.10%
KING, WA	20	2.13%	3	2.88%	\$8,616,582.39	2.51%	97.60%
CONTRA COSTA, CA	3	0.32%	2	1.92%	\$76,551.00	0.02%	97.63%
MIDDLESEX, MA	2	0.21%	1	0.96%	\$3,073,350.00	0.89%	98.52%
BERNALILLO, NM	11	1.17%	1	0.96%	\$2,841,252.00	0.83%	99.35%
ALAMEDA, CA	7	0.75%	1	0.96%	\$976,825.92	0.28%	99.63%
FRANKLIN, OH	2	0.21%	1	0.96%	\$830,327.21	0.24%	99.87%
OTTAWA, OH	1	0.11%	1	0.96%	\$214,215.00	0.06%	99.93%
ADA, ID	2	0.21%	1	0.96%	\$195,160.00	0.06%	99.99%
CLAY, TX	1	0.11%	1	0.96%	\$30,000.00	0.01%	100.00%
Total	939	100.00%	104	100.00%	\$343,930,706.12	100.00%	

Source: Oregon Department of Transportation

¹ Counties above the line are included in the relevant market area.² Cumulative total of percent of federal dollars in market area.

**EXHIBIT 4-12
ARCHITECTURE AND ENGINEERING
UTILIZATION ANALYSIS OF PRIME CONTRACTORS IN THE RELEVANT MARKET AREA
DOLLARS AND PERCENTAGE OF FEDERAL DOLLARS AWARDED
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian SubContinent Americans		Asian Pacific Americans		Native American		Nonminority Women		MWBE Subtotal		NON-MWBE Firms		Total Federal Dollars Awarded
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2008	\$13,520	0.02%	\$100,000	0.15%	\$0	0.00%	\$78,073	0.12%	\$0	0.00%	\$513,037	0.78%	\$704,630	1.07%	\$65,081,605	98.93%	\$65,786,234
2009	\$87,240	0.08%	\$172,898	0.17%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$1,067,589	1.03%	\$1,327,727	1.29%	\$101,831,884	98.71%	\$103,159,610
2010	\$24,395	0.02%	\$4,787,208	3.21%	\$0	0.00%	\$4,955	0.00%	\$0	0.00%	\$704,149	0.47%	\$5,520,707	3.71%	\$143,420,759	96.29%	\$148,941,466
Total	\$125,155	0.04%	\$5,060,106	1.59%	\$0	0.00%	\$83,027	0.03%	\$0	0.00%	\$2,284,775	0.72%	\$7,553,063	2.38%	\$310,334,248	97.62%	\$317,887,311

Source: MGT developed a purchase order and vendor database for the Oregon Department of Transportation for the period of October 1, 2007 through September 30, 2010.

¹ Percent of total dollars awarded annually to prime contractors.

**EXHIBIT 5-1
UTILIZATION OF CONSTRUCTION SUBCONTRACTORS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent		Asian Pacific		Native Americans		Nonminority Women		MWBE Subtotal		NON-MWBE Total		Total Federal Dollars Awarded ²
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	%	\$	% ¹	
2008	\$20,283.00	0.02%	\$7,077,686.00	6.07%	\$30,000.00	0.03%	\$44,600.00	0.04%	\$2,899,442.00	2.49%	\$16,360,523.00	14.03%	\$26,432,534.00	22.66%	\$90,196,415.00	77.34%	\$116,628,949.00
2009	\$1,947,922.00	1.09%	\$4,183,031.00	2.33%	\$52,851.00	0.03%	\$1,049,247.00	0.59%	\$6,927,740.00	3.86%	\$21,728,870.00	12.12%	\$36,889,661.00	20.01%	\$143,452,501.00	79.99%	\$179,322,162.00
2010	\$2,751,779.00	1.10%	\$8,827,404.00	3.53%	\$270,468.00	0.11%	\$5,944,480.00	2.38%	\$3,339,653.00	3.75%	\$23,400,529.00	9.35%	\$50,534,313.00	20.20%	\$199,678,441.00	79.80%	\$250,212,754.00
Total	\$4,719,984.00	0.86%	\$20,086,121.00	3.69%	\$333,319.00	0.06%	\$7,038,327.00	1.29%	\$19,166,836.00	3.51%	\$61,489,922.00	11.26%	\$112,866,508.00	20.66%	\$433,307,357.00	79.34%	\$546,163,865.00

Source: Oregon Department of Transportation.

¹ Percent of Total Dollars Awarded.

² The Total Dollars Awarded is the actual amount given to prime contractors and subcontractors combined.

**EXHIBIT 5-16
STATEWIDE
UTILIZATION OF ARCHITECTURE AND ENGINEERING SUBCONSULTANTS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
FISCAL YEAR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2010**

Fiscal Year	African Americans		Hispanic Americans		Asian Subcontinent		Asian Pacific		Native Americans		Nonminority Women		MWBE Subtotal		NON-MWBE Total		Total Federal Dollars Awarded ²
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2008	\$0.00	0.00%	\$180,812.00	1.04%	\$0.00	0.00%	\$499,807.00	2.87%	\$302,378.00	1.74%	\$397,382.35	2.28%	\$1,380,379.35	7.94%	\$16,013,716.83	92.06%	\$17,394,086.18
2009	\$0.00	0.00%	\$5,908.00	0.08%	\$0.00	0.00%	\$315,307.68	4.12%	\$0.00	0.00%	\$319,594.00	4.17%	\$640,809.68	8.37%	\$7,017,722.33	91.63%	\$7,658,532.01
2010	\$0.00	0.00%	\$96,580.00	1.06%	\$0.00	0.00%	\$62,751.00	0.69%	\$0.00	0.00%	\$129,711.00	1.42%	\$289,022.00	3.17%	\$8,838,878.44	96.83%	\$9,127,900.44
2008-2010*	\$0.00	0.00%	\$120,200.00	1.43%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$120,200.00	1.43%	\$8,308,863.92	98.57%	\$8,429,063.92
Total	\$0.00	0.00%	\$403,500.00	0.95%	\$0.00	0.00%	\$877,945.68	2.06%	\$302,378.00	0.71%	\$946,687.35	1.99%	\$2,430,411.03	5.70%	\$40,179,181.51	94.30%	\$42,609,582.54

Source: Oregon Department of Transportation.

¹ Percent of Total Dollars Awarded.

² The Total Dollars Awarded is the actual amount given to prime contractors and subcontractors combined.