

# 2007 Disparity Study Overview

## Introduction

Transportation plays a critical role in Oregon's economy and the quality of life enjoyed by residents and visitors alike. The Oregon Department of Transportation (ODOT) partners with public and private sector organizations around the state to bring jobs to communities, support the economy and enhance the unique attributes of the state. Over the years, ODOT has offered several supportive services programs to increase its contracting work with small businesses and businesses owned by women and minorities. In order to comply with federal requirements, one of those programs is the Disadvantaged Business Enterprise program, or DBE (DBEs include businesses that are at least 51 percent owned by a woman, minority or other disadvantaged class of people). In the past, on certain federally funded projects, ODOT required contractors to give a certain amount of their subcontracting work to DBEs and in many cases, contractors went beyond the minimum requirements. In one seven-year period, for example, DBEs won 36 percent of the total subcontracts available.

## Background

In May 2005, the U.S. Ninth Circuit Court ruled that a state department of transportation could not have a race-conscious disadvantaged business program without both statistical and anecdotal evidence showing that inequity in contracting opportunities had occurred. ODOT suspended its "hard goals" requiring contractors to hire disadvantaged businesses as subcontractors and replaced them with "aspirational targets" – in effect, asking contractors to voluntarily abide by the goals. ODOT also set about commissioning a comprehensive disparity study.

In January 2007, ODOT retained MGT of America, Inc. to conduct the *Disadvantaged Business Enterprise Disparity Study*. The study looked at, among other things, the amount of business that is awarded to DBEs as compared to the number of available DBEs to do the work. The court said a DOT must have "compelling evidence" to justify having goals in contracts that require the use of DBEs, so ODOT's study focused on what had occurred in ODOT's procurement history.

## Key findings

MGT analyzed ODOT's procurement trends and practices over a seven-year period (October 1999 through September 2007) and found ODOT's overall use of DBEs to be positive. They called the data "comprehensive and well-organized" and commended the department for many successful efforts, including the Emerging Small Business program, the Small Contracting program, and the Web site for upcoming small business opportunities.

In construction subcontracting, the study found two areas where subcontractors had been underutilized: African American-owned and Asian-owned firms. (In prime contracting, the study found that while ODOT has hired DBEs for some prime contracts, there are not enough DBEs available in the state or surrounding areas to perform a meaningful disparity analysis.)

### Subcontracting details

MGT found overall good usage of DBEs in subcontracting as evidenced by these positive findings:

- 175 DBEs won 2,098 construction subcontracts for \$261.2 million or 36 percent of the total.
- Non-minority women-owned firms won \$152.2 million in subcontracts or 21.4 percent of the total.
- DBEs constituted 29.5 percent of construction subcontractor bidders and submitted 67.9 percent of the construction bids.

### Non-goal project details

Even on projects that didn't have DBE requirements, ODOT showed good usage of DBEs. MGT found the following positive results for these projects:

- On state-funded projects, DBE construction subcontractors won \$33.1 million or 36.5 percent of the total.
- On other non-goal projects that included some federal funds, DBEs won \$65.5 million or 38.3 percent of the total.
- In fiscal year 2007, following ODOT's suspension of race- and gender-conscious DBE goals, the usage of DBE construction subcontractors fell almost 30 percent to 26.9 percent, moderately below DBE subcontractor bidder availability.

### Summary of recommendations

MGT found much to commend about ODOT's efforts to increase the amount of work performed with disadvantaged and small business. To help the department move forward in increasing work with targeted groups, MGT created a comprehensive list of recommendations, available in the complete study. The following is a brief summary of several of those recommendations, and information in italics indicates progress ODOT has recently made in addressing them.

- ODOT should reinstate selective use of regional race-conscious goals for both African American and Asian-owned construction firms in procurement areas and regions where there is demonstrated subcontractor availability. *ODOT is working with the small business community, Federal Highway Administration and other partners to further this effort.*
- ODOT should closely monitor the use of DBE construction subcontractors. If it begins to fall significantly below DBE subcontractor availability, ODOT should consider placing race- and gender-conscious goals on selective projects.
- ODOT should continue supporting its high quality emerging small business program (ESB). A strong small business program is central to maintaining a narrowly tailored program to promote using DBEs. *ODOT recently received legislative approval to increase the contract amount from \$50,000 to \$100,000 for ESBs.*
- ODOT should replicate its best-in-class data tracking system on DBE usage to cover DBE usage in professional services subcontracting. *In progress.*
- ODOT should consider a mentor-protégé program where DBEs serve as mentors for other DBE subcontractors. *ODOT recently entered into an agreement with the Port of Portland to participate in the Port's established Mentor Protégé Program for DBEs; it will be operational in spring 2008.*

### Conclusion

While the study found ODOT's overall support of DBEs positive, it also provides enough data to establish selective use of race- and gender-conscious goals. Courts have recently approved a "narrowly tailored" approach to hard goals for using DBEs, and ODOT has several opportunities to do just that on projects. The department looks forward to expanding and enhancing partnerships and opportunities in the small business community throughout the state.