
3.0 REVIEW OF CONTRACTING POLICIES, PROCEDURES, AND PROGRAMS

This chapter focuses on policies and procedures used by the Oregon Department of Transportation (ODOT), to purchase goods and services. It provides a brief description of the procurement and contracting environment in which disadvantaged business enterprises (DBEs) operate, as well as background for the data analysis and foundations for the report recommendations. Finally, we discuss the remedial efforts undertaken by ODOT and various agencies with regard to procurement in the categories of Construction and Professional Services.

Our review is presented in 19 sections. Section 3.1 describes the methodology used to conduct the review of contracting policies, procedures, and programs. Sections 3.2 through 3.6 present a brief summary of the purchasing policies and procedures, and Sections 3.7 through 3.19 cover programs to assist minority- and woman-owned business enterprises (M/WBEs), emerging small business enterprises (ESBs), and disadvantaged business enterprises (DBEs).

3.1 Methodology

This section discusses the steps taken to summarize ODOT's contracting and purchasing policies, procedures, and programs; race- and gender-based programs; and race- and gender-neutral programs. Our review focused on elements of the purchasing process, including remedial programs that might impact DBE utilization. The analysis included the following steps:

- Collection, review, and summarization of ODOT contracting and purchasing policies currently in use. This included discussions with managers the changes that contracting and purchasing policies underwent during the study period and their effects on the remedial programs.

- Development of questionnaires administered to key ODOT contracting and purchasing staff and officials to determine how existing contracting and purchasing policies have been implemented. Interviews were conducted with ODOT management and staff regarding the application of policies, discretionary use of policies, exceptions to written policies and procedures, and impact of policies on key users.
- Review of applicable ODOT ordinances, regulations, resolutions, and policies that guide the remedial programs. This included discussing with both ODOT personnel and program participants the operations, policies, and procedures of the remedial programs and any remedial policy changes over time.

Finally, MGT collected and reviewed copies of previous studies of minority business and DBE development in the geographic region and performed a comprehensive review of race- and gender-neutral programs.

In all, nine interviews were conducted with current ODOT staff and local agencies between January and April of 2007. ODOT documents collected and reviewed for this portion of the study are itemized in **Exhibit 3-1**.

**EXHIBIT 3-1
DOCUMENTS REVIEWED DURING POLICY AND PROCEDURE REVIEW**

INDEX	DESCRIPTION
1.	Uniform Report of DBE Awards or Commitments and Payments, November 26, 2003
2.	Uniform Report of DBE Awards or Commitments and Payments (undated)
3.	Uniform Report of DBE Awards or Commitments and Payments, November 10, 2004
4.	DAS Statewide Policy, Policy Name: MWESB, Policy Number: 107-009-030
5.	ODOT Procurement Office, How to Do Business with the Oregon Department of Transportation (Web, undated)
6.	ODOT, Committed DBE Breakdown (form, June 2003)
7.	ORS Chapter 279A – Public Contracting – General Provisions (2005 edition)
8.	ORS Chapter 279C – Public Contracting – Public Improvements and Related Contracts (2005)
9.	OAR 731 Department of Transportation – Division 5 – Public Contract Rules, Highway and Bridge Projects (2005)

**EXHIBIT 3-1 (Continued)
DOCUMENTS REVIEWED DURING POLICY AND PROCEDURE REVIEW**

INDEX	DESCRIPTION
10.	Disadvantaged Business Enterprise (DBE) Program Document, September 8, 1999
11.	Letter, Members of the Contracting Community, from Matthew Garrett, May 16, 2006
12.	Office of Civil Rights Organization Chart, November 17, 2006
13.	ODOT/Industry Leadership Group, July 14, 2006
14.	FFY 2000-2001 Annual Disadvantaged Business Enterprise (DBE) Goal (ODOT, undated)
15.	FFY 2001-2002 Annual Disadvantaged Business Enterprise (DBE) Goal (ODOT, undated)
16.	Disadvantaged Business Enterprise (DBE) Goal for Federal Fiscal Year 2003 (ODOT, undated)
17.	2004 DBE Goal (ODOT, undated)
18.	Federal Fiscal Years 2005 DBE Goal (ODOT, undated)
19.	Federal Fiscal Years 2006 DBE Goal (ODOT, undated)
20.	Federal Fiscal Years 2007 DBE Goal (ODOT) 8/01/2006
21.	Mason Tillman Associates, <i>Oregon Regional Consortium Disparity Study</i> , vol. 6, Oregon Department of Transportation, May 1996
22.	State of Oregon, General Conditions For Public Improvement Contracts, January 1, 2006
23.	Vernell West & Associates, <i>Annual Activities Report</i> , January through December 2006
24.	Vernell West & Associates, <i>Semi-Annual Activities Report</i> , January through June 2006
25.	OAME Programs and Services (www.oame.org/program.htm)
26.	Governor's Office of the Advocate for Minority, Women and Emerging Small Business, <i>The Advocate</i> (Winter 2005)
27.	Governor's Office of the Advocate for Minority, Women and Emerging Small Business, <i>The Advocate</i> (Spring 2004)
28.	Office of the Advocate for Minority, Women and Emerging Small Business (untitled, undated) egov.oregon.gov/DCBS/DIR/docs/0507budget/b14_omwesb.pdf
29.	Adm. Order No.: MWESB 1-2005(Temp), December 29, 2005
30.	ODOT Quarterly Report to Stockholders, March 2007
31.	Oregon Department of Transportation, Annual Performance Progress Report (APPR) for Fiscal Year 2005-06 2007-09 Budget Form 107BF04c, September 29, 2006
32.	Oregon Department of Transportation, Annual Performance Progress Report (APPR) for State Fiscal Year 2004-05, September 30, 2005
33.	Oregon Department of Transportation, Office of Project Delivery, <i>Project Delivery Guidebook</i> , 2005
34.	Oregon Department of Transportation, Organization Chart, April 2007

3.2 Authorization and Delegation of Responsibility

3.2.1 Governing Rules

The Oregon Public Contracting Code, ORS Chapters 279A, 279B, and 279C, applies to all public contracting, including ODOT.¹ ODOT procurement is specifically addressed in ORS 279.050(3) and Oregon Administrative Rules, Chapter 731, Divisions 5 and 7; Chapter 731, Divisions 146, 147, 148, and 149, which constitute ODOT's adoption of the AG Model Rules of Public Contracting, OAR Chapter 137, Divisions 46, 47, 48, and 49; and Chapter 734, Division 10.

3.2.2 ODOT Procurement Office

The Oregon Public Contracting statute grants the ODOT Director of Transportation the power to construct passenger terminal facilities and motor vehicle parking facilities; to procure all goods and services for the construction of highways, bridges and other transportation; and to establish standards for prequalification.² Administratively, ODOT has the following divisions: Rail, Transportation Safety, Public Transit, Highway, Driver and Motor Vehicle Services, Motor Carrier Transportation, Transportation Development, and Central Services. ODOT is roughly divided into five regions: Portland/Metro, Willamette Valley and Coast, Southwestern Oregon, Central Oregon, and Eastern Oregon.

The Procurement Office of ODOT handles purchases made by ODOT, which total between \$580 and \$790 million a year. The Procurement Office is part of the ODOT Division of Central Services. The ODOT Procurement Office is responsible for Invitations for Bids, Requests for Proposals, and Requests for Qualifications (ITBs, RFPs, and RFQs).

¹ ORS § 279A.025(1). Exceptions are listed in ORS § 279A.025(1), and include sole source procurement, expert witnesses, acquisition and disposition of real estate, grants (including grants between Oregon state agencies and with the federal government), and certain sales of timber.

² ORS § 279.050.

3.3 Purchasing Policies

3.3.1 Competitive Bidding Requirements

ODOT's procurement policy is to "encourage meaningful competition through a variety of solicitation methods."³ These methods include IFBs as well as RFPs, which can include both price and non-price factors and negotiation.⁴ Competitive bidding requirements vary by type and size of procurement.

3.3.2 Public Notice

An advertisement for public improvement contracts must be published at least once in a newspaper of general circulation in the area where the project is to be performed.⁵ If the public improvement will cost over \$125,000, the advertisement must be placed in at least one trade paper of general statewide circulation.⁶ ODOT advertises in the *Daily Journal of Commerce*, through Construction Management Data, and on the ODOT Web site. Plan holders lists for projects less than \$75,000 are placed on the ODOT Web site and distributed by phone and e-mail. Plan holders lists for project greater than \$75,000 are placed on the ODOT Web site.⁷ ODOT is also required to provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business for contracts estimated to exceed \$5,000.⁸ ODOT construction contracts are not posted on the Oregon Procurement Information Network (ORPIN). Instead construction contracts are advertised on the ODOT Web site. Non-construction ODOT contracts are posted on ORPIN.

³ OAR 731-005-0470(2).

⁴ OAR 731-005-0470(2)(a)-(c).

⁵ ORS § 279C.360(1).

⁶ ORS § 279C.360(1); OAR 731-005-0520(2)(c).

⁷ ODOT stopped using ORPIN to advertise ODOT construction projects in September 2006.

⁸ OAR 731-005-0520(4).

Formal solicitations for professional services are advertised on ORPIN and in the *Daily Journal of Commerce*. Informal solicitations for architecture and engineering (A&E) services are advertised on ORPIN.

The state inaugurated ORPIN in March 2005. ORPIN provides “One Stop” access for vendors for procurement information and bidding opportunities for the state of Oregon and local government entities. Vendor registration with ORPIN allows for vendor profiles, e-mail solicitations based on vendor profiles, conventional and on-line bidding, and on-line credit card payments. Firms can pay \$100 per year for the system, which will generate bid notices to the profile that a firm establishes.

3.3.3 Electronic Bidding

Oregon state regulations authorize electronic bidding.⁹ ODOT started using electronic bidding on construction project in June 2007. New rules within OAR Chapter 731, [covering electronic bidding], were adopted in May 2007.

3.3.4 Small Dollar Procurement

ODOT has the discretion to purchase items costing less than \$5,000 without obtaining competitive quotes, although competition is encouraged.¹⁰ For items costing between \$5,000 and \$75,000, ODOT must obtain at least three informal competitive quotes and notify the Oregon Minority, Women and Emerging Small Business Office.¹¹ There is no specific requirement in Oregon law for rotation of vendors on small purchases.

Oregon statutes allow for highway, bridge, and other transportation projects that do not exceed \$50,000 to be awarded in accordance with intermediate procurement procedures; competitive bidding is not required.¹²

⁹ OAR 125-247-0330.

¹⁰ ORS § 279B.065.

¹¹ ORS § 200.035.

¹² ORS § 279A.205(1), (2).

The Oregon Department of Administrative Services has established price agreements that are used across state agencies for items commonly used across Oregon state government.¹³ While a price agreement does not constitute an exclusive dealing arrangement between the vendor and the state unless the agreement expressly so provides,¹⁴ state agencies have generally purchased price agreement items from the holders of price agreements.

3.3.5 Construction

ODOT awards between 150 and 200 construction contracts a year. It is state policy that agencies make every effort to “construct public improvements at the least cost to the contracting agency.”¹⁵ Oregon state law requires that all public improvement contracts be based on competitive bidding, with the following exceptions:

- Contracts not to exceed \$50,000 in the case of highway, bridge or other transportation projects.
- Emergency projects.
- Projects exempted by the Director of the Oregon Department of Transportation and the Director of the Oregon Department of Administrative Services that can be shown to avoid favoritism and result in substantial cost reductions.¹⁶

Project Delivery. Oregon law allows ODOT to award construction projects through an RFP process and design-build as well as design-bid-build.¹⁷ ODOT has three project delivery methods:

- Design-bid-build, in which ODOT contracts with a consulting firm (or ODOT supplies design services with its own employees) and construction is bid and contracted for separately.
- Design-build, in which ODOT contracts with a firm or team of firms for design and construction, with ODOT retaining oversight of the design-build contract.

¹³ ORS § 279B.140.

¹⁴ ORS § 279B.140(3).

¹⁵ ORS § 279C.305(1).

¹⁶ ORS § 279C.335(1), (2).

¹⁷ OAR 731-007-0390, 0400.

- Program management, in which a series of related projects are combined into a single program and ODOT contracts with a firm to perform contract administration and management of the program. These projects can be either Design-Bid-Built or Design-Build.

ODOT has also used job order contracting for some construction projects, particularly those involving emergencies.

Subcontractor Disclosure and Substitution. Bidders are required to disclose first-tier subcontractors that will be furnishing labor for the project and have a contract value greater than or equal to 5 percent of the bid or \$15,000 (whichever is greater), or \$350,000 regardless of the percentage of the total project.¹⁸ First-tier subcontractor disclosure does not apply to contracts below \$100,000, or contracts exempt from competitive bidding requirements.¹⁹ Bidders are not required to disclose the race or gender of the first-tier subcontractors.

Bidders are allowed to substitute subcontractors.²⁰ The subcontractor substitution statute provides standards sufficient for cause regarding subcontractor substitution, including subcontractor bankruptcy, poor performance, inability to meet bonding requirement, licensing deficiencies, ineligibility to work on applicable statutes, and for “good cause” as defined by the Construction Contractors Board.²¹ The statute provides a process by which subcontractors can issue complaints about substitutions. Violation of subcontractor substitution rules may result in civil penalties.²²

3.3.6 Professional Services

ODOT contracts between \$300 to \$400 million in personal services and A&E contracts a year. The ODOT Procurement Office processes contracts for Personal Services, A&E, and non-A&E projects. The Oregon Department of Administrative Services procures some personal services contracts for ODOT. Oregon law provides

¹⁸ ORS § 279C.370(1)(a)(A),(B).

¹⁹ ORS § 279C.370(1)(c),(d).

²⁰ ORS § 279C.370(5), ORS § 279C.585.

²¹ ORS § 279C.585.

²² ORS § 279C.590.

that state agencies are to select A&E consultants “on the basis of qualifications for the type of professional service required.”²³ The statute also allows that “ownership status and employment practices regarding minority, women and emerging small business or historically underutilized businesses” may be a consideration in the screening and selection procedures for A&E firms.²⁴ However, DBE program staff do not typically sit on selection committees to evaluate responses to RFPs for professional services.

There is no policy of rotating vendors for professional services. However, ODOT does issue RFPs for umbrella Agreements To Agree (ATAs), also referred to as “Price Agreements.” Under these ATAs, multiple consultants may be selected and prequalified and local offices and agencies can evaluate and then select a consultant on a work order contract under the ATA.

3.3.7 Cooperative Procurement

Oregon agencies can participate in cooperative procurement for goods and services, but not for public improvements.²⁵

3.3.8 Sole Source Procurement

ODOT permits sole source procurement for goods and services upon one or more of the following written findings:

- That the efficient utilization of existing goods requires the acquisition of compatible goods or services.
- That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.
- That the goods or services are for use in a pilot or an experimental project.
- Other findings that support the conclusion that the goods or services are available from only one source.²⁶

²³ ORS § 279C.110(1).

²⁴ ORS § 279C.110(3)(d).

²⁵ ORS § 279A.205(1), (2).

²⁶ ORS § 279B.075.

3.4 Bonding

The state of Oregon requires performance bonds and payment bonds on contracts to perform public improvement costing over \$50,000 for highways, bridges, and other transportation projects.²⁷ Bonds must be equal to the contract amount. If ODOT requires bid security then the bond security should be 10 percent of the offeror's bid amount.²⁸ Oregon statutes grant the Director of Transportation the authority to waive performance and payment bonds as well as bid security.²⁹

3.5 Vendor Registration and Prequalification

3.5.1 Registration and Eligibility to Bid

ODOT will not consider offers of contractors that do not have a current registration with the Oregon Construction Contractors Board. However, contractor registration is not required to bid on or submit a proposal for federally funded contracts.³⁰ Similarly, ODOT will not consider offers of landscape contractors that do not have a current registration with the Oregon Landscape Contractors Board but landscape contractor registration is not required for federally funded contracts.³¹

Before starting to work on a contract or subcontract for a public works project, a contractor or subcontractor must file a \$30,000 public works bond with an authorized surety.³² Certified DBEs, M/WBEs, and ESBs can elect not to file a public works bond for up to one year after certification.³³

²⁷ ORS § 279C.380(1).

²⁸ OAR 731-005-0550(1).

²⁹ ORS § 279C.390(1).

³⁰ OAR 731-005-0460(1).

³¹ OAR 731-005-0460(2).

³² ORS § 279C.836(1).

³³ ORS § 279C.836(7).

3.5.2 Bidder Qualification

Prime construction bidders must be prequalified annually for ODOT construction projects.³⁴ Bidders must be prequalified ten days before bid opening in the class of work for the bid. In April 2007, there were approximately 376 pre-qualified ODOT prime bidders; 17 of these pre-qualified firms (4.5 percent) were DBEs. In general subcontractors for ODOT construction projects do not have to be pre-qualified.³⁵

3.5.3 Bidder Responsibility

ODOT defines bidder responsibility as follows:

- Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
- Has a satisfactory record of performance. The contracting agency shall document the record of performance of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.
- Has a satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.
- Has qualified legally to contract with the contracting agency.
- Has supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the bidder not to be responsible.³⁶

³⁴ ORS § 279C.430; OAR Ch 731-005-0450.

³⁵ OAR 734-010-0240(6).

³⁶ ORS § 279C.375(b).

3.6 Vendor Relations

3.6.1 Vendor Debarment

ODOT reserves the right to disqualify contractors for cause from consideration for contract award for a period not to exceed three years. Causes for disbarment or suspension include the following:

- The person has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- The person has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person's responsibility as a contractor.
- The person has been convicted under state or federal antitrust statutes.
- The person has committed a violation of a contract provision that is regarded by the contracting agency or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for disqualification.
- The person does not carry workers' compensation or unemployment insurance as required by statute.³⁷

ODOT may also disqualify a bidder on the basis of DBE disqualification, which includes:

- The Entity fraudulently obtained or retained or attempted to obtain or retain or aided another person to fraudulently obtain or retain certification as a disadvantaged, minority, women, or emerging small business enterprise.
- The Entity knowingly made a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit.

³⁷ ORS § 279C.440(2).

- The Entity has been disqualified by another Agency pursuant to ORS 200.065.

For a DBE Disqualification under ORS 200.075, ODOT may disqualify an Entity upon finding that:

- The Entity has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 (“Certified Enterprise”), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise.
- The Entity exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise.
- The Entity uses a disadvantaged, minority, women or emerging small business enterprise to perform services under a Contract or to provide supplies under a Public Improvement Contract to meet an established DBE/MBE/WBE/ESB goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

For a DBE Disqualification under ORS 279A.110, ODOT may disqualify an Entity if ODOT finds that the Entity discriminated against minority, women, or emerging small business enterprises in awarding a subcontract under a prior Contract with ODOT.³⁸ ODOT staff reported that no firm has been disbarred under these rules to date.

3.6.2 Prompt Payment

It is Oregon state policy to make prompt payments on public improvement contracts.³⁹ Interest is to commence 30 days after receipt of invoice from a contractor, or 15 days after payment is approved by ODOT, whichever comes first.⁴⁰ ODOT is required under state law to require contractors on its public improvement contracts to include in their first-tier subcontracts a clause that obligates the contractor to pay their first-tier subcontractors for satisfactory performance of their subcontracts within ten days of

³⁸ OAR 731-005-0710(1)(b).

³⁹ ORS § 279C.570(1).

⁴⁰ ORS § 279C.570(2).

payment by ODOT.⁴¹ Prompt payment is also required under the federal regulations.⁴² Prompt payment compliance is handled by ODOT field coordinators and ODOT civil rights specialists.

3.7 Historical Background of Remedial Programs

ODOT has maintained a DBE program since program inception in the 1970s. In 1996, ODOT participated in a disparity study that covered 13 Oregon state agencies utilization in the Portland metropolitan area. That study found that from FY 1992 through FY 1994:

- For federally funded prime contracts, three DBEs were awarded \$202,434, 0.22 percent of total ODOT spending on federally funded contracts.⁴³
- For state-funded prime contracts, four DBEs were awarded \$573,005, 22.13 percent of total DOT spending on state-funded contracts.⁴⁴
- For subcontracts on federally funded contracts, DBEs were awarded 202 contracts for \$33,561,397, 42.37 percent of subcontract dollars on federally funded contracts.⁴⁵
- For state-funded subcontracts, DBEs were awarded 42 contracts for \$2,805,467, 38.96 percent of subcontractor spending on state-funded subcontracts.⁴⁶
- For federally funded contracts of less than \$500,000, DBEs were awarded 45 contracts for \$1,914,270, 15.68 percent of ODOT spending on federally funded contracts of less than \$500,000.⁴⁷
- For total ODOT spending, 8.29 percent was on nonfederal contracts (state funded).⁴⁸

⁴¹ ORS § 279C.580(3)(a).

⁴² 49 CFR 26.29.

⁴³ Mason Tillman Associates, *Oregon Regional Consortium Disparity Study*, vol. 6, Oregon Department of Transportation, May 1996, At 7-21.

⁴⁴ Id. At 7-23.

⁴⁵ Id. At 8-30.

⁴⁶ Id. At 8-32.

⁴⁷ Id. At 7-19.

⁴⁸ Id. At 6-11.

Following the *Adarand* decision and the revised United States Department of Transportation (USDOT) DBE regulations, the updated ODOT DBE program was approved in February 2000.⁴⁹ DBE utilization was one of the 28 key performance measures used by ODOT to gauge its organizational effectiveness and accountability in 2005.⁵⁰ Following the appeals court decision of the Ninth Circuit in *Western States Paving*, ODOT continued its DBE program, but eliminated the race-conscious elements of its DBE goals program, including setting zero percent project specific goals, on April 19, 2006.⁵¹

From FFY 2001 through FFY 2005, ODOT reported that DBE spending ranged from 9.10 percent to 12.85 percent of ODOT spending (**Exhibit 3-2**). (The data in **Exhibit 3-2** do not include personal services contracts.) The race-neutral portion of the ODOT DBE program ranged from 1.47 percent to 4.31 percent (excluding the current year, in which the goals are to be achieved entirely with race-neutral means). ODOT calculated race-neutral DBE utilization based on (1) DBE prime utilization, (2) DBE utilization on projects with no DBE goals, and (3) DBE utilization as non-committed DBEs on projects where goals were assigned.

**EXHIBIT 3-2
ODOT DBE SPENDING
DOLLAR AND PERCENTAGE UTILIZATION
FFY 2001 THROUGH FFY 2007**

FY	DBE CONTRACTING VOLUMES	DBE PERCENTAGE UTILIZATION	RACE-/GENDER- NEUTRAL UTILIZATION
2001	\$30,082,779	12.72%	1.47%
2002	\$26,885,512	12.85%	3.24%
2003	\$35,302,738	11.28%	4.31%
2004	\$39,735,041	12.05%	1.66%
2005	\$31,905,493	9.10%	3.40%
2006	NA	NA	NA
2007	NA	NA	NA

Source: ODOT DBE Goal Submissions.

⁴⁹ Disadvantaged Business Enterprise (DBE) Program Document, September 8, 1999.

⁵⁰ See, e.g., Oregon Department Of Transportation, *Annual Performance Progress Report (APPR) for Fiscal Year 2005-06 2007-09*, Budget Form 107BF04c, September 29, 2006, at 58.

⁵¹ Letter, Members of the Contracting Community, from Matthew Garrett, May 16, 2006.

3.8 DBE Goal Setting

3.8.1 DBE Aspirational Goal Setting

ODOT annual aspirational goals have been approved by USDOT as being in line with federal regulations. **Exhibit 3-3** presents the ODOT aspirational DBE goals set from FFY 2000 through FFY 2007. ODOT DBE goals ranged between 10.26 percent and 13.06 percent. The 2006 ODOT DBE goals were calculated using the ODOT bidders list. ODOT did not weight its DBE goals using contracting volume. ODOT did adjust the base figure by taking the average of the DBE bidding population and average DBE participation from FFY 2004 and FFY 2005. The race-neutral portion of the ODOT DBE aspirational goal has ranged from 4.37 percent to 9.0 percent (excluding FFY 2007). ODOT used past experience with race-neutral DBE utilization to establish the race-neutral portion of its DBE goal.

**EXHIBIT 3-3
ODOT DBE ASPIRATIONAL GOALS
FFY 2001 THROUGH FFY 2007**

FY	DBE GOAL	RACE-NEUTRAL DBE GOAL
2001	12.42%	4.66%
2002	12.00%	6.61%
2003	13.06%	5.43%
2004	12.80%	9.00%
2005	11.43%	5.73%
2006	10.26%	4.37%
2007	11.32%	11.32%

Source: ODOT DBE Goal Submissions.

3.8.2 DBE Project Goal Setting

During the study period, the ODOT DBE program has been a subcontractor goals program with no race-conscious set-asides or bid preferences and no mandatory joint

ventures for DBE prime contractors.⁵² All DBE project goals are set by the ODOT Office of Civil Rights (OCR). The OCR does seek the opinion of the project manager in setting the DBE project goal. The OCR sets DBE project goals based upon the annual aspirational DBE goal, ODOT region, project scope and bid items, contract size, time of year, and extent to which the aspirational DBE goal has been achieved through race-neutral means.

OCR does set DBE goals on personal services contracts, including ATAs for personal services. However, OCR has not tracked DBE subcontractor utilization for personal services contracts. OCR does set DBE goals on personal service contracts, including A&E contracts.

Evidence was provided by that the ODOT DBE goal setting process was not a rigid quota. On data on 800 federal and state funded ODOT construction projects, over 53.8 percent of the projects had a DBE goal of less than 5 percent (**Exhibit 3-4**). Over 40.3 percent of ODOT projects had no DBE goal placed on the project. Only three projects, 0.3 percent of all ODOT projects for which data was provided, had a DBE goal of greater than 15 percent. The highest DBE goal placed on a project in the data was 18 percent.

**EXHIBIT 3-4
DISTRIBUTION OF ODOT DBE GOALS,
2001-2007**

ODOT DBE GOAL	NUMBER	PERCENT
DBE Goal= 0 %	323	40.3%
0 < DBE Goal < 5 %	108	13.5%
6 % < DBE Goal < 10 %	274	34.3%
11% < DBE Goal 15 %	92	11.5%
16 % < DBE Goal < 18 %	3	0.3%
DBE Goal > 18%	0	0.0%
Total	800	100%

⁵² Oregon state law does permit the limiting of competition for goods and services that cost \$50,000 or less to firms owned and controlled by persons "disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability." ORS § 279A.100(3),(1).

3.8.3 Good Faith Efforts Requirements

ODOT good faith efforts requirements document follow federal regulations. On projects where a minimum DBE participation goal has been assigned, all bidders must submit with their sealed bid proposal a listing of the business name, type of work and contract value of work committed to each DBE subcontractor. The value of all work committed to DBE subcontractors shall be credited toward the goal of the project.

In the event an apparently successful bidder is unable to meet the minimum expected participation per the requirements of the project, that bidder shall provide additional information, at the time of bid opening, regarding good faith efforts (GFE) to secure that participation. ODOT utilizes GFE standards outlined in the bid document as well as Appendix A of 49 CFR Part 26 as guidance to make its GFE determination. ODOT also takes into account the performance of other bidders in meeting the contract requirements.

If it is determined that the apparent successful bidder has failed to meet the GFE requirements, ODOT, before awarding the contract, will notify the bidder in writing within 4 working days of the bid opening. The notification will include the reason for the determination and provide the bidder an opportunity for Administrative Reconsideration.

Administrative Reconsideration includes:

- a. The bidder has the opportunity to provide written documentation or argument to a Review Committee, consisting of personnel knowledgeable with DBE program requirements, concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- b. Upon request, the bidder has the opportunity to meet in person with the Review Committee to discuss the issue of whether it met the goal or made adequate good faith effort.
- c. The Review Committee will make a decision on reconsideration within 3 working days after reviewing the evidence of good faith.

- d. The bidder will be notified in writing by the Review Committee regarding the decision of reconsideration with 4 working days of the decision. This notice will explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- e. The result of the reconsideration is not administratively appealable to the US Department of Transportation.

3.9 DBE Reporting

ODOT does track DBE prime and subcontractor construction spending, in dollar and percentage terms, and reports the results on the Web. ODOT has a very complete reporting system for DBEs in construction, which has 105 tables and includes coverage of DBE utilization at the subcontract and prime contract levels, bidders, ESB utilization, prompt payment, commercially useful function review, complaints against prime contractors, On-The-Job Training, and labor compliance. The system is updated daily. Typically, 90 percent of ODOT projects have federal dollars associated with them and are subject to DBE requirements; the ODOT reporting system thus provides a fairly comprehensive picture of ODOT spending with DBEs.

Through the late 1990s, most of ODOT's design work was performed in house. Consequently, there was no tracking of DBE utilization in A&E. Although ODOT now outsources its A&E work, DBE subcontractor utilization is still not tracked.

3.10 DBE Certification

ODOT DBE certification is handled by the State Office of Minority, Women and Emerging Small Business (OMWESB), located in the State Department of Consumer Affairs and Business Services.⁵³ OMWESB conducts site visits for DBE certification, but not for M/WBE certification, which is handled through telephone interviews.

⁵³ OAR § 125-246-0220.

The ODOT has had a One Stop DBE certification program since 1987. FHWA has approved the Oregon Unified Certification Program (UCP). Current Oregon UCP partners are: ODOT, OMWESB/DCBS, Port of Portland, Tri-Met, Salem Area Mass Transit District, Lane Transit District, City of Redmond, Eugene Airport, Prineville-Crook County Airport Commission, Josephine County, Port of Morrow, City of Myrtle Creek, City of Bend – Bend Area Transit, City of Hermiston and the City of Portland.

The OMWESB DBE directory is posted on the OMWESB Web site (which is linked to ODOT Web site). The OMWESB on-line directory allows for a search of firms by certification number by name, NAICS Code, NIGP code, certification type, location, and capability description. As of April 2007, there were 497 certified DBEs, of which 282 (56.7 %) were owned by women (**Exhibit 3-5**). In April 2007, there were 463 MBEs and 843 WBEs in the ODOT database.

**EXHIBIT 3-5
ODOT
NUMBER OF CERTIFIED DBES
FFY 2004 THROUGH FFY 2007**

FY	DBES	PERCENTAGE OF TOTAL FIRMS
2004	504	11.70%
2005	534	12.94%
2006	522	NA
2007	476	NA

Source: DBE Goals Submissions, ODOT Database.

3.11 DBE Program Staffing

The ODOT DBE program is part of the ODOT Office of Civil Rights (OCR), which is composed of three divisions: Workforce Development/EEO/OJT, Research and Development, and Emerging Small Business (ESB) programs. Since April 2006, the OCR has been part of the ODOT Director's office, reporting directly to the ODOT chief of staff. The ODOT OCR has a staff of 14, including the OCR manager. Five OCR staff are

involved with DBE and small business functions of the OCR. The ESB program, discussed below, has a staff of one.

3.12 M/WBE Program

ODOT maintains no M/WBE program for state-funded transportation contracts. The state of Oregon has an OMWESB office, which primarily handles DBE/M/WBE/ESB certification and outreach. The OMWESB office was started in January 1988. The Governor's Advocate for M/W/ESBs has been in the Governor's Office since 1996.

3.13 Nondiscrimination in Contracting

Oregon state law forbids discrimination in subcontracting, providing that a "bidder or proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a certified minority, woman or emerging small business enterprise."⁵⁴ A contractor may be disbarred or disqualified for violating the state's nondiscrimination rules.⁵⁵ Violation of the nondiscrimination certification after contract award may be deemed a breach of contract, which can result in contract termination.⁵⁶

3.14 Small Business Enterprise

3.14.1 Emerging Small Business Program

The ESB program grew out of the 1989 legislative session. It began as a pilot program and became a permanent program in 1991. The ESB program was not active during the late 1990s, but in 2000-01 the program was reactivated. The Oregon ESB program is currently governed by ORS Chapter 200.

⁵⁴ ORS § 279A.110.

⁵⁵ ORS § 279A.110(2), OAR 731-005-0710(1)(b).

⁵⁶ ORS § 279A.110(5).

The ESB program has always been part of ODOT. Other state agencies are authorized to require prime contractors to subcontract to ESBs.⁵⁷ However, there is very little ESB activity outside of ODOT. At the same time, several Portland area government agencies, in particular the City of Portland, Portland Tri Met, the Portland Development Commission, and Multnomah County, have adopted an ESB program.

3.14.2 ESB Certification

Since January 2006 there has been a two-tier system for ESB certification. A tier one firm employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million (for construction) or \$600,000 (for non-construction). A tier two firm employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million (for construction) or \$1 million (for non-construction).⁵⁸ An ESB cannot be a subsidiary or a franchise. In January 2006, ESB program participation was extended from 7 to 12 years.⁵⁹

The state OMWESB provides one-stop, unified ESB certification for the state of and for local government agencies that have ESB programs. OMWESB does not conduct field audits of ESB status. Instead, ESB certification is handled via desk audits. ESB and OMWESB program staff feels that the stakes are not high enough to generate high levels of fraud. There has been the occasional incident of a partner in a firm creating a new firm to extend the length of time in the program, or of a firm changing its name to remain in the program.

In April 2007 there were 1,241 certified ESBs firms in the ODOT database. There were 989 ESBs in the state of Oregon in FFY 2006 (**Exhibit 3-6**). Of the 1,241 ESBs in April 2007, 244 (19.6 percent) were also DBEs.

⁵⁷ ORS § 279A.105.

⁵⁸ OAR 445-050-0115.

⁵⁹ OAR 445-050-0135.

In 2006 the State instituted a policy such that a firm applying for state MWBE certification is analyzed for ESB certification, and if it meets the qualifications it is automatically certified as an ESB. The firm has 90 days to back out of ESB certification.

**EXHIBIT 3-6
NUMBER OF CERTIFIED ESBS
FFY 2000 THROUGH FFY 2004**

FY	NEW APPLICANTS CERTIFIED	APPLICANTS RE-CERTIFIED	NO-CHANGE AFFIDAVITS	TOTAL FIRMS CERTIFIED ON 9/30
2000	174	40	1	600
2001	181	173	2	599
2002	180	72	182	573
2003	202	55	337	598
2004	227	66	297	621
2005	NA	NA	NA	738
2006	NA	NA	NA	989

Source: Office of the Advocate for Minority, Women and Emerging Small Business.

3.14.2.1 ESB Set-Asides, Goals, and Good Faith Efforts

The ESB program is primarily a small business set-aside. The objective is to obtain competition between firms of similar size. The limit for ESB projects is currently \$50,000. ODOT has engaged in some project unbundling, for safety rest areas for example, to facilitate placing projects in the ESB program. There are no bonding requirements for contracts under \$50,000.

The ESB program is authorized to set goals on larger highway and bridge contracts, but ODOT has not done this as of yet. ESB staff estimate that only 25 percent of ESB firms are in highway or bridge work. There are aspirational ESB goals in ODOT advertisements for projects.

ODOT has the following good faith effort measures for prime contractor bidders for subcontracting with ESBs:

- The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform emerging small business enterprises of contracting and subcontracting or material supply opportunities available on the project.

- The bidder identified and selected specific economically feasible units of the project to be performed by emerging small business enterprises in order to increase the likelihood of participation by such enterprises.
- The bidder advertised in general circulation, trade association, minority, and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities.
- The bidder provided written notice to a reasonable number of specific emerging small business enterprises, identified from a list of certified emerging small business enterprises provided or maintained by the Department of Consumer and Business Services for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively.
- The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested.
- The bidder provided interested emerging small business enterprises with adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work.
- The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any emerging small business enterprises.
- Where applicable, the bidder advised and made efforts to assist interested emerging small business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor.
- The bidder's efforts to obtain emerging small business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency.
- The bidder used the services of minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of emerging small business enterprises.⁶⁰

There is no enforcement mechanism for these ESB good faith efforts provisions at the current time.

⁶⁰ ORS § 200.045(3).

3.14.3 ESB Utilization

The ESB program primarily supplements ODOT highway maintenance services. The state of Oregon has a cost share program for maintenance work marketed to district maintenance offices. If a district identifies a contract, the state pays 75 percent of the cost and the district pays the remaining 25 percent. The district maintenance office goes through a standard procurement procedure with a written proposal and low bid analysis, followed by contract award.

ESB contracts have been concentrated in right-of-way fencing, small buildings, sidewalk repair, surveying, landscape design, emergency work, and some program management. ODOT is seeking to expand the ESB program into personal services, such as A&E computer-aided design (CAD), consulting, public relations, and management.

Data on ESB utilization from August 2005 through November 2006 are presented in **Exhibits 3-7** through **3-9** below. **Exhibit 3-7** presents the utilization analysis of ESBs by ODOT based on awards. Of the approximately \$1.625 million paid to ESBs, certified M/WBEs received approximately 41.70 percent of the construction dollars paid to ESBs, and nonminority firms received over 58.30 percent of the dollars paid to prime contractors during the period. The average ESB contract was \$28,522.

Exhibits 3-8 and **3-9** show the utilization by the number of prime construction contracts awarded and the number of construction firms used during the period. As indicated in **Exhibit 3-8**, 23 contracts were awarded in the relevant market area, and approximately 59.65 percent of these went to nonminority firms. M/WBEs received approximately 40.35 percent of the contracts awarded, and firms owned by nonminority women were the more successful M/WBE group in terms of the number of awarded ODOT contracts. African American-owned firms were not utilized on the ESB program during the relevant time period.

In **Exhibit 3-9**, 15 M/WBE firms participated in ESB projects at the prime contractor level. In comparison, 28 non-M/WBE-owned firms were utilized during the period.

**EXHIBIT 3-7
EMERGING SMALL BUSINESS
UTILIZATION ANALYSIS OF VENDORS
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS
BY RACE/ETHNICITY/GENDER CLASSIFICATION
AUGUST 2005 THROUGH NOVEMBER 2006**

AFRICAN AMERICANS		HISPANIC AMERICANS		ASIAN AMERICANS		NATIVE AMERICANS		NONMINORITY WOMEN		M/WBE SUBTOTAL		NONMINORITY FIRMS		TOTAL DOLLARS AWARDED ²
\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
\$0	0.00%	\$276,828	17.03%	\$36,925	2.27%	\$0	0.00%	\$364,216	22.40%	\$677,969	41.70%	\$947,819	58.30%	\$1,625,788

**EXHIBIT 3-8
EMERGING SMALL BUSINESS
UTILIZATION ANALYSIS OF VENDORS
NUMBER OF CONTRACTS AWARDED
BY RACE/ETHNICITY/GENDER CLASSIFICATION
AUGUST 2005 THROUGH NOVEMBER 2006**

AFRICAN AMERICANS		HISPANIC AMERICANS		ASIAN AMERICANS		NATIVE AMERICANS		NONMINORITY WOMEN		M/WBE SUBTOTAL		NONMINORITY FIRMS		TOTAL CONTRACTS AWARDED ²
#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
0	0.00%	8	14.04%	1	1.75%	0	0.00%	14	24.56%	23	40.35%	34	59.65%	57

**EXHIBIT 3-9
EMERGING SMALL BUSINESS
UTILIZATION ANALYSIS OF VENDORS
NUMBER OF VENDORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION
AUGUST 2005 THROUGH NOVEMBER 2006**

AFRICAN AMERICANS		HISPANIC AMERICANS		ASIAN AMERICANS		NATIVE AMERICANS		NONMINORITY WOMEN		M/WBE SUBTOTAL		NONMINORITY FIRMS		TOTAL VENDORS AWARDED ²
#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
0	0.00%	7	16.28%	1	2.33%	0	0.00%	7	16.28%	15	34.88%	28	65.12%	43

3.14.3.1 ESB Outreach

At present, all ESB contracts are advertised on ORPIN. ODOT also conducts ESB outreach through a brochure for field staff and via communication with Small Business Development Centers (SBDCs) in the state. ODOT has been using an external consultant for outreach of the ESB program to the DBE and M/WBE community since 2004; that contract was recently extended.

When the ESB program was established, an ESB advisory committee was put in place. The ESB program does not have an advisory committee at present. The ESB advisory committee was eliminated as part of budgetary cost cutting in the 1990s.

3.14.4 ESB Business Development Assistance

Oregon State Statutes provide that ODOT will deposit with the State Treasurer an amount equal to not more than 1 percent of each public improvement highway construction contract into the ESB account within 30 days of the contract award.⁶¹ To date, this has been limited to contracts 100 percent financed with State Highway Trust Fund dollars. OCR has proposed an ESB budget of \$3 million for the upcoming fiscal year based on the state share of federally funded contracts.

The Oregon Constitution mandates that the state only spend highway trust funds on highways. Consequently, no ODOT funds can be spent on education, technical assistance, and lending assistance for ESBs. The ESB program does work with the state SBDC network to assist ESB firms that have won ODOT contracts. The state also maintains the GCAP (Government Contract Assistance Program, discussed below), which provides procurement assistance. Although there has been limited technical assistance to ESBs, only three ESB contractors have defaulted on ODOT contracts to date.

⁶¹ ORS § 200.190.

3.14.5 Small Contracting (Pilot) Program

In August 2006, under its Small Business Initiative, ODOT started a pilot program targeting small firms in Region I. The program sets aside contracts of less than \$75,000 for competition amongst small firms. The program has targeted A&E firms thus far. Firms register for the program by responding to an RFQ posted on ORPIN. There are currently 117 firm registered with the program.

When projects arise, a selection panel is formed. If there are nine or fewer firms registered in the discipline necessary for the project, all the firms are considered. If there are ten or more firms registered in the discipline, then at least five firms are considered. Preference is given to firms without ODOT contracts. Consequently, firms that have a current contract with ODOT or have had a contract with ODOT in the last three years are not considered for that project.

The short list is invited to informal interviews. Only one representative from the firms attends the interviews, and there are no formal presentation materials. The selection panel scores the responses to three to six questions. The firm with the highest point total is selected.

Thus far, three contracts have been awarded, each for \$74,900, for a total of \$224,700. The DBE status of the firms is identified, but no DBE has won a contract award under the program to date. The program is expected to roll out statewide in the summer of 2007.

3.15 Financial Assistance Programs

3.15.1 ODOT Financial Assistance Programs

ODOT does not maintain a lending assistance program for small or DBE firms. USDOT does have a Short Term Lending and Bond Program that has been promoted by

ODOT's Supportive Services Coordinator. There are number of other loan programs maintained by the state of Oregon and other nonprofit organizations; these are discussed below. Some of these programs are not listed because they focus on manufacturing, retail, or other business areas to the exclusion of businesses that operate in the transportation contracting area.

3.15.2 DBE Reimbursement Fund

ODOT maintained a DBE Reimbursement Fund in FFY 2005 and FFY 2006. The purpose of the Fund was to reimburse DBEs for costs associated with specified business needs, such as association memberships. Sixteen firms received funds for a total of \$7,463 in 2006. The Fund was terminated in FFY 2007.

3.16 Other Loan Programs

3.16.1 Mercy Corps Northwest Loan Program

The Mercy Corps Loan Program provides loans for startup and existing businesses with a particular emphasis on businesses creating jobs for low-income individuals. Mercy Corps serves individuals operating or planning to operate a business in the six-county Portland-Vancouver metro area. The size of Mercy Corps loans ranges from \$500 to \$50,000. Loan terms are up to 60 months. Loans can be used for capital assets, inventory and supplies, working capital, and purchase of an existing business. Loans cannot be used for payment of existing debt, operating deficits, personal income, nonaccredited training, or speculative property, or for pre-startup research and development. Mercy Corps also provides counseling and business plan development. Since its establishment, the Mercy Corps Loan Program has provided counseling to over a thousand clients and has made 82 loans totaling over \$600,000. All borrowers have

been low-income business persons, and over 55 percent of the loans have been made to women.

3.16.2 Oregon Association of Minority Entrepreneurs Credit Corporation (OAMECC)

OAMECC is a subsidiary of the Oregon Association of Minority Entrepreneurs (OAME) that provides a micro loan program and loan packaging assistance for commercial banks and other financing sources. The OAMECC micro loan program was started with U.S. Small Business Administration (SBA) funds and provides loans up to \$35,000. OAMECC provides loan services to existing and start-up small businesses located in Clackamas, Clatsop, Columbia, Multnomah, Tillamook, Washington, and Hood counties in Oregon and in Clark County in Washington State. The OAMECC program services loans for a broad range of business purposes. The OAMECC program provides term loans, SBA-guaranteed loans, and lines of credit. OAMECC loans cannot be used to refinance existing debt or to purchase real estate. Ongoing technical assistance is a condition of financing for OAMECC loans. Repayment terms can be up to six years. The OAMECC Loan Fund has processed 70 loans for a total of \$440,996.

3.16.3 Oregon Capital Access Program (CAP)

CAP provides start-up and expansion loans for small businesses. The business can be for profit or not for profit and can use loan proceeds for most business uses except to purchase or improve residential housing, to purchase real property not used for a business, or to refinance a non-CAP loan. CAP provides a wide variety of loan types and lines of credit. Essentially the program works by the state of Oregon matching loss reserve accounts for the CAP loans established by commercial banks. The program has made almost 1,500 loans for a total of \$56.3 million since 1991. There are 30 enrolled lenders in the CAP program.

3.16.4 Entrepreneurial Development Loan Fund (EDLF)

EDLF provides direct start-up loans and small business counseling for Oregon businesses. EDLF targets firms meeting two of the following criteria:

- In operation for less than two years.
- Revenues of less than \$100,000 over the previous year.
- Owned by a severely disabled person.

EDLF loans require 20 percent equity, personal guarantees, and adequate collateral. The maximum loan term is five years. Applicants must be enrolled in an SBDC or other certified small business counseling program.

3.16.5 US Small Business Administration (SBA)

The SBA maintains the 504 Loan Program and the 7(a) Loan Guarantee Program. The SBA's Community Express program targets MBEs in low- and moderate-income neighborhoods with a high concentration of minority residents. The program provides an 85 percent guarantee for loans of less than \$150,000 and a 75 percent guarantee for loans ranging from \$150,000 to \$250,000. The Oregon SBA sponsors a monthly briefing by an SBA loan specialist.

3.17 Bonding and Insurance Assistance

At present ODOT does not maintain a bonding assistance program. Bond waivers are discouraged, however, because of the need to build bonding capacity. As noted above, the ESB program is authorized to waive bonding for projects under \$50,000.

3.18 Management and Technical Assistance

3.18.1 ODOT Management and Technical Assistance

3.18.1.1 Supportive Services

Vernell West & Associates held the ODOT support services contract during the study period through December 2006. The Supportive Service Program assisted certified DBEs in projecting cash flow, loan packaging and bonding, and cost control accounting, amongst other areas. ODOT Supportive Services has undertaken the following activities:

- Conducting outreach at:
 - Oregon Association of Minority Entrepreneurs (OAME) contractor meetings and trade fairs.
 - African American Chamber of Commerce business advisory meetings.
 - City of Vancouver small business outreach forums.
 - WSDOT DBE staff.
- Organizing outreach for pre-bid conferences, including faxes, newsletters, and e-mails.
- Managing the DBE Reimbursement Fund.
- Maintaining plans and specifications at a plan center.
- Publishing and distributing a newsletter, *Building Bridges*, five times a year and posting the newsletter on the V. West Web-site. The newsletter covered the DBE Reimbursement Fund, the USDOT Short Term Lending and Bond Programs, contract results, lists of DBE interested in upcoming projects, and how to do business with ODOT and upcoming events.

The Supportive Services Coordinator noted low attendance in pre-bid conferences and at the plan center. The annual report also noted that there was a decline in interest in Supportive Services after ODOT discontinued race-conscious DBE goals.

ODOT does not currently have federal funding for a supportive services contract. ODOT is currently working with several service providers at the present time. Over the near term ODOT will pay for DBE supportive services with State funds.

3.18.1.2 General M&TA

ODOT has provided training on how to do business with ODOT as well as technical assistance referrals. ODOT partnered with GCAP and the state SBDC Network in addition to the supportive services contract. OMWESB has put on workshops on ORPIN for the OMWESB vendor base. ODOT is working on a mentor-protégé program to start in the summer of 2007.

3.18.2 Other Business Development Assistance Programs

A number of business organizations and local centers also support business development in ODOT and the State of Oregon.

3.18.2.1 Procurement Technical Assistance Center

Along with the Organization for Economic Initiatives (OEI), the Defense Logistics Agency (DLA), and the Oregon Economic and Community Development Department (OECDD), ODOT is a sponsor of the Government Contract Assistance Program, the Oregon branch of the national Procurement Technical Assistance Program (PTAP). PTAP was started in 1985 to assist businesses selling to the U.S. Department of Defense (DOD). GCAP was awarded its first PTAP cooperative agreement in 1986. The PTAP program was extended throughout the state of Oregon in 1989. GCAP assists with market research, business code identification, registration Web site, bid matching, specifications, and federal acquisition regulations. GCAP also sponsors workshops on government contracting, contract administration, GSA proposals, and ODOT's ESB program. GCAP has three offices in Oregon (Portland, Springfield, and North Bend) and three subrecipient centers.

3.18.2.2 Small Business Development Centers (SBDC)

The Oregon SBDC Network assists small businesses in the areas of start-up, expansion organizational structure, and management. The SBDC Network program provides publications and free counseling primarily through a network of 19 SBDCs. The Oregon SBDC Network offers over 200 workshops, including seven on construction, and on-line classes organized in conjunction with ed2go.

In FY 2006 the Oregon SBDCs provided free counseling to 5,088 clients across the state; 10,086 individuals attended SBDC training sessions over the same period.⁶² Of the SBDC counseling clients, 314 were minorities, 2,690 were women, and 317 were disabled. Of the attendees at SBDC training sessions, 689 were minorities, 5,570 were women, and 156 were disabled.

There are three Oregon providers of the FastTrac program for new and existing businesses: Corvallis Neighborhood Housing Service (Corvallis), Merit Microenterprise (Salem), and the North Santiam Canyon EDC (Mill City).

3.18.2.3 Oregon Association of Minority Entrepreneurs (OAME)

The OAME Clearinghouse provides outreach services for M/WBEs and ESBs in the state of Oregon. The OAME also established:

- The Incubator Without Walls, a 40,000-square-foot facility. The OAME incubator provides office space at or below market rates, as well as individual technical assistance counseling.
- The OAME Mentor-Protégé Program, an effort to assist minority business development.
- The OAME administrative support services program, which provides assistance in the areas of graphic design, computers, copiers, internet, fax, mail, and conference rooms.
- The OAME resource library, which contains publications, a Plan Center for construction contractors, internet access, and procurement notices.

⁶² SBDC, Activity Summary, FY 2006-2007.

3.18.2.4 Other

SCORE Business Resource Center. The Business Resource Center (BRC) in Portland provides a business resource library, internet access, computer resources, and audiovisual aids for entrepreneurs and small business owners.

Mercy Corps Northwest. Volunteer business professionals provide assistance with business plans, loan packages, and business operations. Mercy Corps also offers classes and seminars, including a six-week CORE 4 Business start-up curriculum. Finally, Mercy Corps offers the Portland Small Business Community Web site, www.pdxbizhelp.org, a collection of on-line resources, including a discussion forum and digital library, and a comprehensive list of Portland-Vancouver area small business resources.

ONABEN. A Native American Business Network was founded in 1991. It has supported tribally sponsored SBDCs and created the Native American Business Directory and the Women's Business Center (WBC). The directory lists over 500 businesses. The WBC is the only women's business center in the state and is open to all women.

3.19 Outreach

ODOT's and the state of Oregon's DBE outreach efforts have included:

- Funding the ODOT supportive services contract with V. West and Associates, discussed above.
- Maintaining the ODOT Web site, which contains information on the department's mission, Program Certification, Supportive Services, Resource Documents, Resource Links vendor outreach, race-neutral programs, contracts, the procurement code, DBE goals, and DBE utilization, as well as links to certification forms and extensive ODOT contracting information.

- Supporting the Advisory Council that has been in place in some form since 1995. Currently there is a Small Business Advisory Council, which has been meeting monthly since June 2006.
- Participating in the Governor's Marketplace, which was attended by 40 DBEs in 2006.
- Supporting the Oregon Procurement Fair, sponsored by GCAP.
- Planning pre-bid conferences.
- Placing bid information and the plan holders list on ORPIN. Construction bid information also can be downloaded for free from ODOT. Bid information is also sent to the construction exchanges.
- Organizing training sessions on how to do business with ODOT.
- Publishing a DBE Directory and posting its contents on the Web.