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## 8.0 ANECDOTAL ANALYSIS

This chapter presents the results of the analysis of anecdotal research for the State of Oregon Department of Transportation disparity study. Anecdotal evidence is designed to explain, interpret, and support statistical findings. Courts have ruled that the combination of statistical findings of disparity and anecdotal evidence provides the best evidence for demonstrating the existence of historical discriminatory practices. Anecdotal evidence does not rely solely on quantitative data. It also utilizes qualitative data to describe the context of the environment as well as the climate in which all businesses and other entities applicable to our study operate.

In *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 509 (1989), the Supreme Court stated that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified.” Furthermore, in *O'Donnell Construction v. District of Columbia*, 963 F.2d 427 (D.C. Cir. 1992), the Court found that anecdotal evidence is most useful as a supplement to strong statistical evidence. Although the Court did not accept anecdotal evidence or statistical evidence, individually, as a basis of evidence to demonstrate claims of discrimination, it acknowledged the combined strength of the two when both supported findings of discrimination.

In applying *Croson*, the Ninth Circuit Court of Appeals, in *Associated General Contractors of California, Inc. v. City and County of San Francisco*, addressed the appropriate manner in which a race-conscious and gender-conscious program should be evaluated. Concerning anecdotal evidence, the court stated, “As pointed out by the City, it must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each and every instance

that the legislative body has relied upon in support of its decision that affirmative action is necessary.”<sup>1</sup>

Anecdotal evidence is a widely accepted research tool that is based upon observations, interviews, and surveys. The collection and analysis of anecdotal data are performed to determine whether underutilization of minority- and women-owned firms results from objective, nonbiased bidding and purchasing procedures or from discriminatory practices. It is used in conjunction with research tools to foster clarity and support for findings.

Our questionnaires for the anecdotal data included specific requests for responses related to the respondents' attempts to do business with the State of Oregon Department of Transportation (ODOT) and in the relevant market area for ODOT. Some of the information presented in this chapter is based on opinions and perceptions of business owners and representatives who consented to comment about their experiences. We recognize that opinions and perceptions are naturally subject to bias. Therefore, we looked for similarities with, and differences between, the comments shared with us for this study and those that we have heard from similarly situated businesses in other studies as a reasonableness test for the information provided to us. We believe this approach provided an accurate perspective and allowed for the development of objective recommendations. The anecdotes in this chapter should not be viewed singularly as particular indictments of the ODOT, but should be read collectively to facilitate an understanding of areas of programmatic success for the ODOT—which were many—and areas where there are opportunities for improvement.

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<sup>1</sup> *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 950 F.2d 1401, 1416 (9th Cir. 1991).

This chapter consists of the following sections:

- 8.1 Methodology
- 8.2 Telephone Survey Demographics
- 8.3 Personal Interview Demographics
- 8.4 Procurement Process
- 8.5 Subcontracting Experience
- 8.6 Discrimination
- 8.7 D/M/WBE Program
- 8.8 Conclusions

### **8.1 Methodology**

The blueprint for collecting and analyzing anecdotal evidence for this study was identified by the U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989), a landmark case for government-sponsored affirmative action programs. Specifically, race-conscious programs must be supported by strong documentation of discrimination, including evidentiary findings that go beyond the demographics of a community. Anecdotal evidence can bolster the empirical data of contract expenditures to explain whether or not minority business creation, growth, and retention are negatively impacted by discrimination. In *Croson*, the Court held that anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such evidence can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to minority and women business participation in contract opportunities.

Our experience conducting disparity studies has shown that anecdotal data collected through multiple methods provide more comprehensive information than methodologies using a single-pronged approach. For this reason, we used the combination of a telephone survey, focus groups, public hearings and face-to-face interviews to collect anecdotal information and to identify issues that were common to

businesses in the market area. We were also able to draw inferences from these data as to the prevalence of obstacles perceived as limiting the participation of minority- woman- and disadvantaged-owned business enterprises (M/W/DBEs) in ODOT procurement transactions. Given the importance of anecdotal evidence by the courts, we approach the collection and analysis of anecdotal data with the same methodological rigor given to quantitative data analysis.

The focus of the telephone survey, focus groups, public hearings and face-to-face interviews was to identify the respondents' experiences in conducting business with the ODOT. We solicited participation and responses from businesses that have done, or were interested in doing, business with the ODOT between the years 2000 and 2006. Firm participation was derived from the utilization data developed for this study. Firm interest was indicated by vendor registration with one of the source agencies used to develop the master vendor list used for this study.

With the telephone survey (**Appendix Q**), we reached a broader segment of a population in a more cost-effective and time-efficient manner than possible through face-to-face interviews. However, the face-to-face interviews—which are structured settings where an interviewer uses an interview guide (**Appendix O**) to solicit input from participants—provided more latitude for additional information gathering on issues that are unique to the respondents' experiences.

### **8.1.1 Telephone Survey**

The telephone survey process was conducted during the months of August, September and October, 2007. Pacific Research and Evaluation (PRE), MGT's Oregon based subconsultant, randomly selected firms from the master vendor database created by MGT in order to identify businesses willing to participate in the telephone survey. The process attempted to collect data in proportion to the distribution of M/WBEs and non-

M/WBEs in the relevant market area, inclusive of ODOT regions 1 - 5. (See Chapter 4.0 of this report for further discussion of relevant market area and the master vendor database.) The statistical model showed that 595 responses were needed to achieve a confidence interval of 95 percent with a 5 percent margin of error. In addition to meeting the goal of 595 completed interviews, targets were provided for each business category and gender/ethnic group. This was done to eliminate any biases in the response data by ensuring appropriate representation from all business categories, ethnicities and genders. To this end, PRS attempted to contact business owners or knowledgeable representatives from over 2,810 firms in our master vendor database. At least five attempts were made per interview candidate and we successfully interviewed representatives from 639 firms, exceeded the goal of 595 that provided goods and services like those generally purchased by the ODOT.

The following targets were used for the telephone survey:

		Target	Completion
Primary Line of Business	Building Construction	120	118
	Special Trade Contractor	209	209
	Professional Services	103	102
	General/Personal Services	114	114
	Supplies and Equipment	34	34
	Architecture/Engineering	57	58
		Target	Completion
Race/Ethnicity	Caucasian	437	505
	African American	23	25
	Asian or Pacific Islander	30	34
	Hispanic American	29	36
	Native American/Alaskan Native	20	21
	No Response	11	14
51% Women-Owned	Yes	241	241

All interviewers were instructed to call every vendor with an available number up to five times before coding them as “No Response.” Each vendor was called no more

than once per day. Calls met by a receptionist or voicemail were left a message with a return toll-free number for the vendor to call back regarding the survey. While every attempt was made to gain participation from firms representing each category of ethnicity, gender, and business type, two factors created challenges: differences between the Master Vendor database classifications for ethnicity, gender, and/or business type compared to participants' self-reported classifications, and difficulty in getting participation from specifically the owner or manager due to the season (summer-fall is generally the busiest time of year for contractors).

In assessing the sufficiency of results, disparity study surveys are commonly plagued by sample size limitations, especially in the case of attempting to gather a representative sample from minority populations where low minority population numbers pose problems. (For example, Native American-owned business populations in most municipalities are insufficient in number to permit a valid and representative sample). This problem is compounded when analyses are stratified further by business type. Insufficient sample sizes can pose problems for the statistical confidence one can have in the results. Although MGT's goal is to report data samples that can satisfy the 95 percent confidence level, this does not mean that data should not be reported when lower survey participation levels reduce confidence intervals slightly, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard. **Exhibits 8-1(a)** and **(b)** reveal that the effort was, indeed, diligent for this study and show the disposition of the telephone canvassing efforts. According to the phone call log, the following results were obtained:

**EXHIBIT 8-1(a)**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**DISPOSITION OF TELEPHONE CALLS**

<b>Result</b>	<b>Number</b>
Total Number of Calls Made	5,353
Erroneous Number/Participant (WN/WP)	97
Disconnected Number (DN)	246
Called No Response (NR)	67
Refused to Participate (RP)	559
<b>Completed Interviews</b>	<b>635</b>

Pacific Research and Evaluation, August, September, October, 2007<sup>2</sup>

**EXHIBIT 8-1(b)**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**DISPOSITION OF TELEPHONE CALLS**  
**BY BUSINESS CLASSIFICATION**

	<b>Architectural/ Engineering</b>	<b>Construction</b>	<b>Goods and Supplies</b>	<b>Other Services</b>	<b>Professional Services</b>	<b>Total</b>
<b>M/WBE</b>	31	147	24	93	76	371
<b>Non-M/WBE</b>	27	180	10	21	26	264
<b>Total</b>	58	327	34	114	102	635

Pacific Research Services, August-October, 2007

The business owners of the interviewed firms identified themselves as:

- African Americans – 25;
- Hispanic Americans – 36;
- Asian Americans – 34;
- Native Americans – 21;
- Women – 241;
- Non-M/WBEs – 174; or
- No Response<sup>3</sup> – 7.

### **8.1.2 Personal Interviews**

The personal interviews were conducted during the months of September and October, 2007. The one-on-one interviews were conducted with a cross-section of the

<sup>2</sup> The **Erroneous Number/Participant (WN/WP)** category consists of phone numbers that were wrong numbers, fax machines, pagers, or the wrong person (a firm not on our list). The **Disconnected Number (DN)** category represents phone numbers that were disconnected. The **Called No Response (NR)** category includes phone numbers that were called five times unsuccessfully.

The **Refused to Participate (RP)** category includes phone numbers of vendors who refused to participate in the telephone survey and terminations during interviews.

<sup>3</sup> No responses are refusals and companies run by boards or another type of organization (not individually owned).

community in ODOT five regions. Study participants were randomly selected from MGT's Master Vendor Database. Over 400 firms were invited to participate in the process. Pacific Research and Evaluation mailed, emailed, or faxed confirmation letters to all firms that agreed to be interviewed. The interviews were conducted either at the firm owner's office, at a location designated by the firm owner, or over the phone as requested by the firm owner. Interviews ranged in length from 15 to 90 minutes.

### **8.1.3 Focus Group**

A total of five focus groups were conducted in Oregon during the months of September and October, 2007. The focus groups were each conducted at a central location according to Region, and participants were solicited from within a geographic radius of no more than 60 miles from that location. Focus groups were voice recorded after all participants agreed to be recorded. Due to the Region being extremely rural, and the necessary time commitment required for participation (2 hours face-to-face in addition to necessary travel time), it was impossible to enlist enough participants to conduct a focus group in Region 5.

The focus groups in Region 1 and 2 were conducted by Joan Gardenhire and MGT staff with assistance provided by Pacific Research and Evaluation (PRE) staff members Miriam Lederer and Kim Stevens. The focus groups in Regions 3 and 4 were conducted by PRE staff Miriam Lederer and Kim Stevens. MGT of America and Pacific Research and Evaluation provided training for the interviewers.

The makeup of the focus group session is presented in **Exhibit 8-2** below.



**EXHIBIT 8-2  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
FOCUS GROUPS  
BY ETHNICITY AND ODOT GEOGRAPHICAL REGION**

	AA	HA	AS	NA	NMW	NMM
<b>Region 1</b>	<b>3</b>	<b>1</b>		<b>1</b>	<b>4</b>	<b>3</b>
<b>Region 2</b>	<b>1</b>				<b>3</b>	<b>1</b>
<b>Region 3-5</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>
<b>% of Total</b>	<b>17</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>30</b>	<b>39</b>

CLG Management, PRE, 2007

The session was organized using the format and questions as shown in **Appendix R**.

**8.1.4 Public Hearings and Demographics**

MGT conducted two public hearings with owners and representatives of firms located in Regions 1 and 2 in Oregon. In addition, representatives of two professional trade organizations, two public agencies and four local tradepersons were in attendance at the Region 1 Public Hearing. The public hearings were held September 11<sup>th</sup> and 13<sup>th</sup>, 2007. The Region 1 Public Hearing was held at the Doubletree Hotel Lloyd Center, Mt. St. Helens Room (1000 NE Multnomah Ave, Portland) from 7:00 p.m. to 9:00 p.m. Twenty-one people and nine speakers (one speaker represented a public agency and a non-profit professional organization.) The Region 2 Public Hearing was held at the Red Lion Salem (3301 Market Street, NE, Salem) from 7:00 p.m. to 8:30 p.m. Joan Gardenhire, CLG Management, LLC. facilitated both public hearings with assistance provided by MGT staff. Coordination of the hearings and administrative support was provided by PRE. Seven people attended with four speakers.

A representative number of members of the National Association of Minority Contractors of Oregon with knowledge of the Oregon business environment attended, testified and some submitted written testimony to be included in the report. Tri-County Metropolitan Transportation District of Oregon (Tri-Met) was represented and a prepared written statement signed by the General Manager was read into the record. The

statement expressed “support of ODOT’s efforts” and the offer to “make available Tri-Met staff to act as a resource to any of your [ODOT’s] future needs”.

Each attendee was given an agenda that included the purpose of the public hearing and the public testimony process. Speakers were given a public hearing testimony form for completion and instructed to submit prior to being called to testify. All testimony was recorded by teach reporting.

The makeup of the public hearings is presented in **Exhibit 8-3** below.

**EXHIBIT 8-3  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
PUBLIC HEARINGS  
BY ETHNICITY AND ODOT GEOGRAPHICAL REGION**

	AA	HA	AS	NA	NMW	NMM
<b>Region 1</b>	9	1	0	1	0	4
<b>Region 2</b>	1	0	0	0	2	4

CLG Management, PRE, 2007

The session was organized using the agenda as shown in **Appendix T**.

**8.2 Telephone Survey Demographics**

The businesses that participated in the telephone survey were mainly construction with specialty construction representing 32.9 percent of all participants followed by building construction (18.6 percent), general/personal services (18.0 percent). Architecture/engineering firms participants accounted for 9.13 percent of the firms surveyed. Most non-M/WBEs that participated in the telephone survey were building construction and special trade contractors (28 percent). Next in order of succession were professional services and architectural/engineering consultants (10 percent, respectively) and operational services vendors (8 percent).

M/WBEs that responded to the telephone survey were primarily special trade contractors (26 percent) operational services consultants (25 percent) professional

services consultants (21 percent) or equipment and supplies vendors (7 percent). M/WBE architectural/engineering consultants that responded to the telephone survey were 8 percent.

The overall distribution of non-M/WBEs and M/WBEs by business category was as follows:

- Construction – 51%
- Professional Services – 16%
- Architecture/Engineering Services – 12%
- Operational Services – 18%
- Equipment and Supplies – 5%

Our analysis of the respondents' length of time in operations showed that 61 percent were founded between the years 1991 and 2007. Next in succession, based on all respondents, were firms that were founded between 1971 and 1990 (29 percent of the respondents). Nine percent of the participant firms were established before 1970.

Only one firm of the 635 surveyed had been in business prior to 1900. Thirty-eight percent of the surveyed firms had been in business prior to 1990. Even though non-MWBE firms tended to be older firms in that percentage, just under 50 percent of the older firms were non-minority owned women firms. In each MWBE category, the greater number of firms commenced operations between 1991-2007.

A majority of the business owners surveyed had completed some college education, attained a college degree, or completed postgraduate studies. This was true for 77.6 percent of the respondents. Firms that participated in the telephone survey generally employed 20 or fewer persons. The participating firms generated varying levels of revenue, resulting a good cross section for our data analysis.

**Exhibit 8-4** provides an overview of the demographics for the telephone survey participants.

**EXHIBIT 8-4  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
TELEPHONE SURVEY  
SELECTED DEMOGRAPHICS**

Demographic	African American	Hispanic American	Asian American	Native American	Nonminority Women	Total M/WBE	Non M/WBE	Total Respondents	
<i>Respondent's Job Type</i>									
Owner	19 76%	32 89%	26 77%	14 67%	196 82%	293 79%	174 66%	635	
Manager	4 16%	2 6%	7 21%	6 29%	35 15%	57 15%	66 25%		
Other	2 8%	2 6%	1 3%	1 5%	9 4%	20 5%	25 9%		
<i>Primary line of business</i>									
Building Construction	2 8%	5 14%	6 18%	6 27%	24 10%	49 13%	69 26%	635	
Special Trade Contractor	5 20%	15 42%	9 27%	4 18%	61 25%	98 26%	111 42%		
Professional Services	4 16%	4 11%	8 24%	1 5%	58 24%	76 21%	26 10%		
General/Personal Services	9 36%	9 25%	3 9%	6 27%	65 27%	93 25%	21 8%		
Supplies/Equipment	2 8%	1 3%		2 9%	19 8%	24 7%	10 4%		
Architecture/Engineering	3 12%	2 6%	8 24%	3 14%	13 5%	31 8%	27 10%		
<i>Year Established</i>									
before 1900							1 0%	636	
1901-1950	4 16%	2 6%		3 14%	12 5%	22 6%	5 2%		
1951-1970	2 8%		2 6%		16 7%	22 6%	13 5%		
1971-1990	5 20%	10 28%	14 41%	3 14%	76 32%	116 31%	69 26%		
1991-2007	14 56%	24 67%	18 53%	16 73%	135 57%	210 57%	178 67%		
<i>Number of Employees</i>									
0-10	17 68%	25 69%	24 71%	18 82%	158 66%	249 67%	169 64%	638	
91-100	2 8%	1 3%			1 0%	4 1%	4 2%		
Over 100	3 12%		2 6%	2 9%	10 4%	18 5%	12 5%		
11-20	3 12%	7 19%	3 9%		33 14%	47 13%	41 15%		
21-30		2 6%	3 9%		11 5%	16 4%	17 6%		
31-40		1 3%			13 5%	16 4%	5 2%		
41-50			2 6%		3 1%	6 2%	9 3%		
51-60					4 2%	5 1%	1 0%		
61-70				1 5%	4 2%	5 1%	3 1%		
71-80					4 2%	4 1%	3 1%		
81-90				1 5%	2 1%	2 1%	2 1%		
<i>Number of Minority</i>									
0-10	20 80%	35 97%	29 85%	20 91%	214 89%	330 89%	227 85%		638
91-100				1 5%	1 0%	1 0%			
Over 100	1 4%			1 5%	1 0%	4 1%	5 2%		
11-20	1 4%	1 3%	2 6%		16 7%	21 6%	20 8%		
21-30	1 4%		2 6%		4 2%	7 2%	10 4%		
31-40	1 4%				4 2%	5 1%	2 1%		
41-50	1 4%					1 0%	1 0%		
61-70					1 0%	1 0%	1 0%		
71-80			1 3%			1 0%			
81-90					1 0%	1 0%			
<i>51% Women-owned</i>									
Yes	6 24%	15 42%	11 32%	9 41%	241 100%	284 76%			
No	19 76%	21 58%	23 68%	13 59%		88 24%	266 100%		
<i>Education Level</i>									
Some high school					4 2%	4 1%	2 1%	560	
High school graduate	4 18%	5 16%	5 16%	1 6%	27 13%	46 14%	36 16%		
Trade or technical education		1 3%	1 3%		7 3%	9 3%	4 2%		
Some college	4 18%	4 13%	9 29%	6 33%	49 23%	74 23%	40 17%		
College Degree	7 32%	16 52%	12 39%	4 22%	75 36%	118 36%	84 36%		
Post graduate degree	5 23%	5 16%	4 13%	7 39%	43 20%	67 21%	52 22%		
No Response	2 9%				6 3%	9 3%	15 6%		
<i>Years of Experience</i>									
1-10 years	8 32%	4 11%	1 3%	7 33%	18 8%	38 10%	35 14%	627	
11-20 years	2 8%	10 28%	18 53%	3 14%	82 35%	119 32%	83 32%		
21-30 years	8 32%	16 44%	13 38%	6 29%	83 35%	132 36%	86 33%		
31-40 years	7 28%	4 11%	2 6%	3 14%	43 18%	62 17%	39 15%		
41-50 years		2 6%		1 5%	8 3%	11 3%	8 3%		
51 or more years				1 5%	4 2%	5 1%	9 4%		

Our analysis of the revenues generated by the survey participants showed a reasonable distribution of firms among the revenue thresholds. Therefore, the responses to our inquiries were not slanted to either large or small firms. One point of interest, though, was that six percent of firms owned by African Americans were more likely to generate \$1,000,000 or less in annual revenues (42 percent of the respondents were in this dollar threshold category) than firms in other business owner classifications. The owners of firms that participated in the telephone survey were more likely to report 21 to 30 years of direct experience in the firm's line of business.

### **8.3 Personal Interview Demographics**

The personal interview guide used in interviewing businesses included questions designed to establish a business profile for each business. Interviewers gathered information concerning the primary line of business, ethnicity of owner, organizational status, number of employees, year business established, gross revenues, and level of education. The guide also included questions trying to glean information as to firms' experiences attempting and conducting business with ODOT (both directly and as a subcontractor); and experiences related to the D/M/WBE Program, as well as instances of discrimination experienced by the firm while attempting to do business with ODOT. The interviewers made no attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary. At the conclusion of the interviews, each participant was asked to sign an affidavit attesting that their responses were given freely and were true and accurate reflections of their experience with ODOT.

Of the pool of firms contacted a total of 43 (86%) interviews occurred and an additional seven firms were contacted who did not participate for various reasons.

Information regarding owner ethnicity and business classifications are shown in **Exhibits 8-5 (a) and (b)**.

**EXHIBIT 8-5 (a)**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**PERSONAL INTERVIEWS**  
**BY OWNER ETHNICITY**

	African American	Hispanic American	Asian American	Native American	Nonminority Female	Nonminority Male
<b># of firms interviewed</b>	3	2	3	0	5	30
<b>% of Total</b>	7	5	7	-	12	70

\*percentage exceeds 100 due to rounding

The interviewees represented 17 construction firms; 16 professional services firms; 7 equipment and supplies vendors; 1 operational services provider; and 2 general service vendors. The breakdown by business owner classification was as follows:

**EXHIBIT 8-5(b)**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**PERSONAL INTERVIEWS**  
**BY BUSINESS CLASSIFICATION**

	Architectural Engineering/ Professional Services	Construction	Goods and Services	Other Services	Equipment & Supplies	TOTAL
<b>Minorities</b>	5	10	2	1	7	25
<b>Nonminorities</b>	11	7	0	-	-	18

**8.4 Procurement Process**

**8.4.1 Survey Results**

The telephone survey included questions designed to solicit interviewee experiences with the ODOT during the procurement process. Inquiry was made about barriers faced by firms that may prevent the company from bidding or attaining success in conducting business with the ODOT. **Exhibit 8-6** details the responses by business owner classification.

- Analysis of the survey showed that 70 percent of non-M/WBEs that responded to the survey tended not to bid to ODOT as a prime, compared to 25 percent who have bid one to 20 times. In comparison 67 percent of nonminority women respondents tended not

to bid as well compared to 28 percent who have submitted bids one to 20 times.

- Of African Americans respondents to the survey, eight percent have had contracts with ODOT as primes since 2000, 45 percent of nonminority women respondents have had prime contracts since 2000.
- Of the 18 African American-owned firms (4 percent of 482 respondents) 14 (78 percent) have also bid or worked as a subcontractor. 145 nonminority women (30 percent) of 482 respondents have bid or worked as a subcontractor.

**EXHIBIT 8-6  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
TELEPHONE SURVEY  
BY BUSINESS CLASSIFICATION**

Demographic	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Non M/WBE		Total Respondents
<i>Number of non-ODOT public agency bids since 1999</i>															
0 times	6	24%	10	28%	3	9%	10	46%	63	26%	97	26%	66	25%	638
1-20 times	11	44%	13	36%	14	41%	5	23%	96	40%	144	39%	69	26%	
21-40 times	2	8%	3	8%	1	3%	2	9%	26	11%	34	9%	27	10%	
41-60 times			3	8%	1	3%	1	5%	10	4%	15	4%	23	9%	
61-80 times			2	6%	1	3%			3	1%	6	2%	8	3%	
81-100 times			3	8%	4	12%	1	5%	10	4%	20	5%	16	6%	
101 or more times	6	24%	2	6%	10	29%	3	14%	33	14%	56	15%	57	21%	
<i>Number of times requested as a subcontractor since 1999</i>															
0 times	9	36%	13	36%	8	24%	15	68%	90	37%	140	38%	83	31%	638
1-20 times	10	40%	12	33%	12	35%	5	23%	79	33%	122	33%	63	24%	
21-40 times	1	4%	2	6%	1	3%	1	5%	10	4%	17	5%	19	7%	
41-60 times	2	8%	2	6%	3	9%			12	5%	19	5%	17	6%	
61-80 times			2	6%	2	6%			1	0%	5	1%	8	3%	
81-100 times					1	3%	1	5%	16	7%	19	5%	12	5%	
101 or more times	3	12%	5	14%	7	21%			33	14%	50	13%	64	24%	
<i>Number of times hired as a subcontractor since 1999</i>															
0 times	10	40%	13	36%	10	29%	12	55%	100	42%	150	40%	91	34%	638
1-20 times	9	36%	13	36%	14	41%	6	27%	78	32%	126	34%	72	27%	
21-40 times	2	8%	2	6%	2	6%	1	5%	14	6%	22	6%	24	9%	
41-60 times			2	6%			1	5%	9	4%	12	3%	9	3%	
61-80 times					1	3%			4	2%	5	1%	10	4%	
81-100 times			1	3%	1	3%			7	3%	9	2%	10	4%	
101 or more times	4	16%	5	14%	6	18%	2	9%	29	12%	48	13%	50	19%	
<i>Have you used a subcontractor since 1999?</i>															
Yes	7	54%	13	65%	12	75%	10	91%	79	59%	128	63%	90	64%	343
No	6	46%	7	35%	4	25%	1	9%	54	41%	75	37%	50	36%	
<i>How often use minority/women-owned subcontractors on ODOT projects?</i>															
Very Often	2	15%	4	24%	5	23%			7	6%	23	12%	22	13%	355
Sometimes			1	6%			2	13%	11	10%	15	8%	30	18%	
Seldom			1	6%	1	5%	4	25%	8	7%	14	7%	20	12%	
Never	3	23%	3	18%	6	27%	4	25%	36	32%	53	28%	34	21%	
No Response	8	62%	8	47%	10	46%	6	38%	51	45%	85	45%	59	36%	
<i>Rate experience with minority-owned subcontractor firms</i>															
Very Often	7	44%	11	48%	13	48%	3	18%	34	25%	69	30%	28	15%	309
Sometimes	1	6%	4	17%	3	11%	5	29%	33	24%	48	21%	54	30%	
Seldom	3	19%	4	17%	1	4%	3	18%	21	15%	36	16%	34	19%	
Never	3	19%	2	9%	2	7%	3	18%	31	23%	42	18%	41	23%	
No Response	2	13%	2	9%	8	30%	3	18%	19	14%	37	16%	25	14%	
<i>Rate experience with non-minority women-owned subcontractor firms</i>															
Excellent	10	77%	9	47%	4	22%			26	25%	50	28%	20	15%	303
Good	1	8%	6	32%	10	56%	7	54%	39	38%	68	38%	70	53%	
Fair	2	15%	1	5%			2	15%	9	9%	15	9%	9	7%	
Poor									1	1%	1	1%	3	2%	
No Response			3	16%	4	22%	4	31%	29	28%	43	24%	30	23%	

- Less than two percent of the African American respondents have been asked to work as a subcontractor between 1 to 20 times. 15 percent of nonminority women and 10 percent of Non minority owned firms have been asked to work as a subcontractor between 1 – 20 times.

**Results from the Focus Groups, Interviews, and Public Hearings**

Five focus groups were conducted for the disparity study in September and October, 2007. MGT used the same facilitators for the three sessions in Regions 1 & 2 and PRE facilitators for the sessions in Region 3 – 5, for consistency. Several issues were discussed during the two hours sessions. Below is a summary of comments expressed by participants. The following comments either addressed ODOT specifically or the comments reflected a perception or experience with the business community in general.

- Analysis of the interviewee responses showed that most firms responded that ODOT is generally fair in their selection process. When asked a slightly different question, a fourth of the firms responded that their firm had been treated unfairly in the ODOT selection process. Approximately half of all Architecture/Engineering firms offered that selection for all ODOT Design-Build and architecture/engineering contracts are biased towards a limited number of specific larger firms based out of the western region of the state.
- More than forty percent of firms responded that selection favoritism or an informal network existed within ODOT. Among these firms, interviewees responded that the favoritism or network is based on “relationships”, a fourth of the interviewees responded that it is based on “prior working experiences” or “performance”, and another fourth of firms responded that it is based on potential agency selection committee biases toward or collusion between ODOT and a limited number of specific firms.
- Following are the factors most commonly cited among all participants as interfering with firms’ bidding or receiving ODOT contracts:
  - size of contract and bonding requirements too high
  - competition for contracts with large firms
  - exclusion from an informal network within ODOT
  - geographic location or distance from Salem ODOT office
  - DBE goal exclusion or reverse discrimination



- low bid requirement
  - volume of paperwork necessary, RFP process requirements
  - volume of experience required
  - untimely release of retention as prime and subcontractors
- 
- In region 3 – 5, 80 percent of all W/MBE firms responded that the DBE Program goals had no effect on their firms' ability to compete for or receive contracts. Most W/MBE firms (72 percent) also responded that without DBE percentage requirements (hard goals versus aspirational goals), prime contractors do not contract with W/MBE subcontractors, unless they have a prior working relationship.
  - M/WBE and non-M/WBE, reported practices prime contractors use to avoid having to meet DBE goals. According to these participants, some firms fraudulently claim a DBE status by, for example, naming the wife of an owner as a 51 percent owner although she doesn't participate in the firm, thereby gaining the status themselves so that they don't have to subcontract to M/WBE firms. Participants also cited a practice in which previously established prime contractors establish illegitimate M/WBE subcontractor firms in order to avoid meeting DBE goals.
  - It was noted that excessive procedures create problems in the business owners' attempts to comply with the requirements of the procurement process. Participants report that compared to other public agencies, ODOT procurement and RFP processes require a volume of paperwork that is too large, not reflective of the size of projects, and is not feasible for small firms and their resources. The volume of paperwork necessary to bid or provide a quote for an ODOT contract prohibits small firms from bidding at all.
  - It was stated that for professional services firms the cost submission process "were kind of ridiculous. Specifically the hourly rates, specifying caps to hourly rates for design professionals. Caps on reimbursable expenses. The projects were in Southern Oregon, both of them in the southern portion of the state, so for us to do it from Portland, we'd have to travel, and there was no way to recoup any of those expenses...there was a couple of other things in terms of how it was financially set up in terms of how it was –how difficult it would be to be profitable."
  - Several representatives from professional services firms rated the overall procurement process at 4.5 with 5 being poor.
  - It was stated that ODOT's on-call projects tend to be just empty contracting vehicles where the subcontractors don't see a lot of work or never hear about them ever again until the next RFP for the next on-call comes on, and you're like, "Well, what happened with the last one."

- An MBE, DBE professional service firm representative stated they have submitted resumes to be on teams but it has rarely paid off. They search the website for opportunities and network primarily to get on teams.
- A representative from a WBE stated that the specifications/credentials for doing work with ODOT as well as the Port of Portland were difficult and were a barrier -- ODOT requires MTCIP standards, which there's only about four firms in the United States that have MTCIP standards. Costs over a million dollars to become certified... Except for traffic -- our traffic lights are a little different because we go through ITE certification and other certifications. Two other -- we're Cal Trans certified, ITE, and another certification out of New Jersey. So we have three certifications there, but ODOT is very difficult to work with. The engineer specifies in [the project requirements] that they have to be MTCIP, and that's just all protocol stuff. We make the signs with the same LED's that these manufacturers make. We use the same amount of solder; we use the same amount of everything. And you still can't make it; if it's not certified through these independent laboratories, you can't get them out there. They shut us out. It's ODOT, but it's the specification, because they're specifying a specific certification.
- An MBE/DBE construction firm stated that they had not tried to get work with ODOT in the past four years because it was fruitless. They had worked previously with ODOT however ODOT tends to self perform work that could be contracted to smaller firms. They have gotten work from other public sector agencies.
- A white female owned information services firm had recently received an email from ODOT about a "Mini selection RFP for regional project utilizing informational technical services". She received a subsequent telephone call from the "woman who sent the email and this woman stated that she wanted 'to make sure you received that, because even if this project doesn't interest you right away, if you want to be considered for future projects, you have to send in this form by Friday that was attached to the email.'"
- An MBE/DBE professional service firm stated that African Americans have had very little access to opportunities of working with ODOT. NAMCO recently tried to communicate with the ODOT civil rights director about applying for some funds that he had for internship programs. He didn't respond to our request, and we thought we were, would be the very type of program that he might be interested in supporting. We don't have the conversations with that agency that other organizations have an opportunity to have.
- During one of the public hearings, an African American construction contractor who had been in business for more than 25 years stated that "ODOT is a disaster for DBEs. It is felt that ODOT refuses to

institute best practices and there are no measurable outcomes for Civil Rights programs; no public accountability for policies and that ODOT engages in diversionary tactics such as the ESB program.”

- An African American electrical contractor testified that his firm does not bid ODOT anymore after trying for a number of years. He stated that his firm is qualified bondable, with a single project bonding limit of over two million dollars, insurable - insurance rates [limits] are twice as high as the average because some of the work they perform are at the Portland Air Base and to drive vehicles on base; Air National Guard, same thing; they have professional liability insurance and they have the financial capability and capabilities to do the work. It's just they [ODOT] refuses to open the door, even let us into one little project. A hundred thousand dollar project would be great...”

Overall, the majority of participants in the focus groups expressed the opinion that the ODOT was difficult to get into and difficult to work with. The majority of the participants stated that because of the size of the projects being let they tended to exclude the majority of the local businesses. At the same time, nonminority males and females tended to feel that the present procurement process worked well, with an overall rating of 3 out of 5, while minorities tended to feel that it could be improved.

#### **8.4.2 Competing with Large Companies**

##### **Survey Results**

There was a general sense expressed that there are very few small opportunities available and local and small firms tend to compete with larger firms from out of state for available projects. Comments included:

- Well, it doesn't make a whole lot of sense for us to track it that bad if we cannot identify a prime to be teaming with, because no matter what how many projects we learn from the advertisement, we cannot get into as a prime. Well, because the way ODOT is soliciting a job, you know, they always come as a big, big project. You know, for instance, this On-Call Services, which I think more than half or even 75 percent of the ODOT projects are through On-Call Services. And you have every three year, they renew this On-Call companies. You got more than a dozen of the big prime company to bid this On-Call Services, and they only select four to five companies. How can a small firm like us to compete; it's impossible.

- A white female owned professional services firm stated that because of her size she could not compete for a large web project. She stated that it takes a team and she wanted to know how to find primes to work with on information services projects.
- Several ESB representatives discussed the difference between the City of Portland small business initiatives and the ODOT on-call services process. The City of Portland has a \$25,000 cap on the fees a professional service firm can receive over the past two years. For professional services firms that's really small jobs. So typically the On-Call Services are used to bring in MBE, LSB, ESB's. The ODOT has an On-Call contract roster in which all the firms are big. The way the roster is supposed to work is so ODOT can deal with smaller projects. In other words if they want to redo the I-5 corridor, that's a big contract; they'll go out for an RFP on that, and everybody will compete. But if they've got a bathroom they have to redo at some rest stop, they'll go to the roster and pull off of that; that way they don't have to go through the RFP process. The way the process is set up is they renew these On-Call Services every three years. Either state wide or discipline specific. They only choose three to four companies, but you've already got 12 to 16 big firms to compete for that short list. For small firms, zero chance to get onto that short list.
- The previous discussion by professional services firms concluded that getting work with ODOT is difficult because their contracts tend to be really huge and the only means to get small projects is through the On-Call Service contracts with little chance of success because large firms are also on the list.
- A nonminority woman owned General Services firm interviewee stated that ODOT avails themselves of the statewide contract. The factors that interfere with the company's ability to bid on projects with ODOT include size of projects; quotes too broad; location of work and ODOT bundles computers and printers and this excludes all but two or three firms in Oregon.
- A nonminority woman owned construction related services interviewee with revenue up to \$5,000,000, 90 percent generated from the public sector, who has bid between 11 – 25 projects with ODOT and about five percent have turned into contracts. She stated that ODOT is going toward large design build project, which are done by non-Oregon firms, they select few Oregon firms.

Participants recommended making contracts smaller in order to make them more competitive for smaller firms; pairing small companies with larger companies to provide them with experience/opportunities; and making more “value-based” selections (as opposed to a low bid award process).

### **8.4.3 Disseminating Information**

#### **Focus Group and Public Hearing Results**

Participants stated that the ODOT's primary means of disseminating information, particularly bid opportunities is through ORPIN and the Daily Journal of Commerce. Participants thought the ODOT was making attempts to do outreach to smaller businesses through the Supportive Services consultant.

Some of the concerns expressed by DM/WBE and ESB vendors regarding bid information included:

- A certified ESB white male business owner said that their standard way of finding opportunities is in the Daily Journal of Commerce (DJC), anticipating finding ODOT work. They've attempted to [pursue] on a couple projects, but the process was so onerous, they backed out. They pursued a small project and the process was not worth the effort to go after it.
- Being listed as a certified firm does not guarantee notification of opportunities.
- Participants felt that the best approach to getting business from the ODOT was to meet people and ask what the needs are.
- A white male representing a white woman owned firm stated that they search the website (ORPIN a state website that list -- the city and all the government agencies have their bids on there), DJC, make a lot of phone calls prior to projects being formally announced, trying to find those contracts that are coming down the road far in advance. Being in agreement with others, it was stated that being a subcontractor you don't see a lot of prime opportunities. So the trick is to get in on teams well in advance of the release of the formal RFP.
- It was stated that once an opportunity is listed in the DJC, "its old news". An MBE professional service firm has done work for ODOT as a sub and had one project as a prime on a small project a number of years ago. They work for other engineers, and occasionally for a general contractor, doing construction staking, and ...inspection. Their experience is generally good. The paperwork is confusing and difficult sometimes. They've been fortunate that larger firms have assisted them through the paperwork.
- A nonminority professional services firms stated "Well, my situation is very different. To be honest with you, in the past four years, my --

my company's business -- well, we do civil structural design; basically I think more than 70 percent of our revenue are from ODOT projects. But [the] only way we doing work with ODOT were through other big prime companies .

- An Asian owned certified MBE firm (doesn't qualified as DBE because of economic certification criteria) felt that paperwork and letting dates interfere with the company's ability to bid on ODOT projects. Felt contracting process for big contracts extremely fair however projects less than \$500,000 are not broadcasted. And not knowing about projects prevents them from winning .

### **Focus Group and Public Hearing Results for Other Jurisdictions in Oregon**

During the facilitation of the focus groups, it was observed that complaints were also lodged against other jurisdictions with Oregon. The relevance of identifying these issues is to highlight the business climate for the same firms that are doing business with ODOT. The impact of a negative climate from another governmental jurisdiction with Oregon is experienced by many of the same businesses that are doing business with ODOT. It is important for ODOT to understand the environment, because the adverse impact affects the performance or viability of these same firms as they attempt to do business with ODOT. Below is a summary of comment expressed by participants:

- Washington County, Clackamas County, but Multnomah County, I mean, it's doing a better job in terms of outreach, although they don't have a whole lot of contract because they pretty much stay within the city of Portland boundaries, so the majority of the jobs are taken care of by City of Portland. But Washington County and Clackamas County, they are mainly in the suburban area, so they have huge amount of job output, but, they're worse in terms of government agency outreach and assistance to small firms.
- An MBE/DBE professional services firm stated "I wanted to also say that I've worked on numerous large public works projects: the light rail streetcar and I-205 and the Portland Mall project. African-Americans, Latinos, Asian-American and women, Native Americans, have had plenty of opportunities on those projects."
- A couple DMWBEs stated that comparing Tri-Met, Metro, City of Portland and ODOT, ODOT will be on the low end in terms of making their jobs available or reachable by small firms. "...The City of Portland has done a very good job in terms of identifying small jobs, encouraging small companies to bid the job. Also Tri-Met has

done a great job because a majority of their jobs are federally supported, so that a mandatory goal...So Tri-Met people have done a good job of outreach [to] the small firms for contracting opportunities. Metro has done a relative okay job, too. Port of Portland would be next. An ODOT really is the worst except for those two counties (Washington County and Clackamas County).

- The Port of Portland Mentor-Protégé program was not seen as very supportive of training and educating smaller firms for success.
- A non MWBE construction firm that is also a member of the AGC felt the AGC's mentor-protégé program should be duplicated/implemented at ODOT to address teaming concerns raised by DMWBEs.

#### **8.4.4 Interaction with ODOT staff**

##### **Focus Group, Interviews and Public Hearing Results**

- An African American contractor stated that “ODOT has a history of neglect and institution confusion. There is no continuity between ODOT Directors; key staff turnover with few clear directives or performance criteria; nor no “best practices” agenda or implementation strategy.”
- During the public hearing it was testified that NAMCO representatives have made overtures to the ODOT's Director of Civil Rights to meet to discuss participating on the committee that had been established to address barriers. According to testimony, the CR Director “declined, he denied us to have a seat on that committee.”
- It was testified by an African American construction contractor that the ODOT Civil Rights Program “is neglected; suffers from staff turn over and staff have no authority.”
- Both nonminority owned and D/M/WBEs felt there is an inconsistency with project engineers between the regions. It was stated that should you alienate the project engineer you are in serious trouble. It was also stated that the persons in Civil Rights are not committed and the DBELO reports two layers below the Department Secretary.
- An African American owned construction contractor that specializes in concrete testified that he “had been trying to get work with ODOT for the past seven years and finally got to the point three years ago and decided it was a waste of time. One of the jobs that [he] got a call on was putting snow stakes up some mountain in Oregon. ODOT gave him two days to come up with all the information that he needed for these snow stakes...and go after this job over in eastern Oregon that's going to pay 50 thousand dollars. “...when I call the

gentlemen over there that was the project manager, to ask him about this project, he kind of told me if I can't meet the qualifications, then I guess you can't bid. I said, so I guess I just can't bid; so I let it go." This same contractor stated that he had bid a "quite a few projects for ODOT and done zero work for ODOT."

- An African American owned electrical contractor testified that they do both private sector and public sector work. It was testified that ODOT [is] insulting when you talk to them; does not return phone calls; ignores their proposals and [believes] their proposals are being manipulated on the tail end to increase their proposal number, and then turns around and receives no support from them."
- A Hispanic American owned professional services A/E firm stated during an interview that he feels that everything is based on relationships and who you know. Claims that ODOT has not been responsive to minority businesses; middle management levels in ODOT, do not seem committed.
- An Asian owned MBE stated that ODOT self performs projects therefore small firms are never called. He also stated that it is hard for new companies to break in because job foreman work with the same firms.
- A nonminority woman owned construction related services interviewee stated that depending on project and the region where work is located ODOT personnel are courteous and responsive when you interact with them. She did state that she will not work in Region 5 (Eugene).

#### **8.4.5 Prompt Payment**

##### **Survey Results**

- Larger percentage of non MWBEs experienced delay of payment on ODOT projects as compared to MWBE of 30 – 60 days.
- Over 37.2 percent of women and minorities reported waiting over 60 days to be paid on ODOT projects as compared to 30.4 percent of nonminority males. This compares with 12.4 percent women and minority respondents waiting over 60 days to be paid on private projects (10.9 percent of nonminority males). Over 44.2 percent of women and minorities reported substantial delays in payment from primes, but 50.2 percent of nonminority males reported this problem.

**Exhibit 8-7** shows the telephone survey results for prompt payment.



**EXHIBIT 8-7  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
TELEPHONE SURVEY  
PROMPT PAYMENT**

Demographic	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Non M/WBE		Total Respondents
<i>Have you ever been the low bid on an ODOT project, awarded a contract, and then found out that another firm was performing the work?</i>															
Yes	2	12%	4	15%	3	15%	2	12%	5	3%	16	7%	19	9%	
No	15	88%	20	77%	16	80%	14	82%	136	91%	214	88%	191	87%	
Don't know			2	8%	1	5%	1	6%	8	5%	12	5%	9	4%	461
<i>Please explain the circumstances</i>															
lower bid after contract award	1	100%			1	50%			2	67%	4	67%	6	75%	
DBE goal requirements					1	50%			1	33%	2	33%	2	25%	14
<i>How many ODOT projects have you served as a subcontractor?</i>															
1-10	4	80%	6	55%	6	40%	7	64%	46	50%	73	52%	74	48%	
11-25					5	33%	1	9%	14	15%	20	14%	21	14%	
26-50			3	27%			1	9%	9	10%	15	11%	16	10%	
51-100									7	8%	7	5%	11	7%	
Over 100	1	20%	1	9%	2	13%	1	9%	10	11%	16	11%	23	15%	
Don't know			1	9%	2	13%	1	9%	6	7%	10	7%	10	7%	296
<i>Have you ever been the low bid on an ODOT project, awarded a contract, and then found out that another firm was performing the work?</i>															
Yes	2	12%	4	15%	3	15%	2	12%	5	3%	16	7%	19	9%	
No	15	88%	20	77%	16	80%	14	82%	136	91%	214	88%	191	87%	
Don't know			2	8%	1	5%	1	6%	8	5%	12	5%	9	4%	461
<i>Please explain the circumstances</i>															
lower bid after contract award	1	100%			1	50%			2	67%	4	67%	6	75%	
DBE goal requirements					1	50%			1	33%	2	33%	2	25%	14
<i>Do you think prime contractors show any favoritism toward using particular subcontractors for ODOT projects?</i>															
Yes	12	63%	17	57%	14	45%	12	63%	89	43%	150	47%	120	51%	
No	3	16%	4	13%	4	13%	3	16%	41	20%	59	19%	64	27%	
Don't know	4	21%	9	30%	13	42%	4	21%	77	37%	110	35%	53	22%	556
<i>Please explain how they show favoritism</i>															
relationships	1	11%	3	23%	1	10%	3	33%	31	37%	40	31%	27	34%	
DBE status			1	8%					5	6%	6	5%	4	5%	
performance	2	22%	4	31%	2	20%	1	11%	7	8%	16	12%	6	8%	
prior experience	5	56%	3	23%	6	60%	3	33%	38	45%	57	44%	38	48%	
price			1	8%	1	10%			1	1%	3	2%	2	3%	
qualifications	1	11%	1	8%					2	2%	4	3%	2	3%	
location							1	11%	1	1%	2	2%			
size/capacity							1	11%			1	1%			208
<i>How frequently have prime contractors delayed payment for your subcontractor work?</i>															
Very Often	3	14%	3	9%	5	17%	1	7%	21	10%	35	11%	32	14%	
Sometimes	3	14%	13	39%	4	14%	2	13%	43	21%	70	22%	55	24%	
Seldom	7	33%	6	18%	10	35%	6	40%	69	34%	102	33%	81	36%	
Never	6	29%	11	33%	7	24%	4	27%	50	25%	79	25%	44	20%	
No Response	2	10%			3	10%	2	13%	21	10%	28	9%	13	6%	539

**Results from the Focus Groups, Interviews, and Public Hearings**

- Non DMWBE construction prime contractor stated that ODOT has prompt payment policies that allow prime contractors some discretion as to be able to pay subcontractors as quickly as they want to.
- A nonminority woman-owned business professional services firm with more than 13 years of business experienced answered the focus group survey declaring that her firm had been dropped from a project after a prime was awarded the contractor; not paid as specified as specified in the contract or payment schedule and had also experienced completing a job and the payment was substantially delayed and an untimely release of retainage.
- A nonminority owned construction contractor and member of the Associated General Contractors testified that “ODOT has a 10 day prompt payment law but it doesn’t have a lot of teeth.”
- The manager of an SBE professional services/environmental consulting firm stated that ODOT is the “worst client in terms of slow payment and negotiating rates.” The biggest obstacles in dealing with ODOT are red tape and bureaucracy.

**8.5 Subcontracting Experience**

**8.5.1 Survey Results**

The telephone survey included questions about respondent experiences subcontracting to other firms on ODOT projects and on jobs in the private sector. Of the African American respondents who answered our questions about subcontracting, the primary negative issues noted were as follows:

- Was dropped from the project after the prime was awarded the contract (23 percent)
- Submitted the lowest bid but did not win the contract (12 percent)
- Pressured to lower bid/quote (41 percent)

**Exhibit 8-8** summarizes participants’ responses to questions about their experiences as subcontractors.

**EXHIBIT 8-8  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
TELEPHONE SURVEY  
SUBCONTRACTING EXPERIENCE**

Demographic	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Non M/WBE		Total Respondents
<i>Have you ever been the low bid on an ODOT project, awarded a contract, and then found out that another firm was performing the work?</i>															
Yes	2	0%	4	1%	3	1%	2	0%	5	1%	16	3%	19	4%	
No	15	3%	20	4%	16	3%	14	3%	136	30%	214	46%	191	41%	
Don't know			2	0%	1	0%	1	0%	8	2%	12	3%	9	2%	461
<i>Please explain the circumstances</i>															
lower bid after contract award	1	7%			1	7%			2	14%	4	29%	6	43%	
DBE goal requirements					1	7%			1	7%	2	14%	2	14%	14
<i>How many ODOT projects have you served as a subcontractor?</i>															
1-10	4	1%	6	2%	6	2%	7	2%	46	16%	73	25%	74	25%	
11-25					5	2%	1	0%	14	5%	20	7%	21	7%	
26-50			3	1%					9	3%	15	5%	16	5%	
51-100									7	2%	7	2%	11	4%	
Over 100	1	0%	1	0%	2	1%	1	0%	10	3%	16	5%	23	8%	
Don't know			1	0%	2	1%	1	0%	6	2%	10	3%	10	3%	296
<i>Have you ever been the low bid on an ODOT project, awarded a contract, and then found out that another firm was performing the work?</i>															
Yes	2	0%	4	1%	3	1%	2	0%	5	1%	16	3%	19	4%	
No	15	3%	20	4%	16	3%	14	3%	136	30%	214	46%	191	41%	
Don't know			2	0%	1	0%	1	0%	8	2%	12	3%	9	2%	461
<i>Please explain the circumstances</i>															
lower bid after contract award	1	7%			1	7%			2	14%	4	29%	6	43%	
DBE goal requirements					1	7%			1	7%	2	14%	2	14%	14
<i>Do you think prime contractors show any favoritism toward using particular subcontractors for ODOT projects?</i>															
Yes	12	2%	17	3%	14	3%	12	2%	89	16%	150	27%	120	22%	
No	3	1%	4	1%	4	1%	3	1%	41	7%	59	11%	64	12%	
Don't know	4	1%	9	2%	13	2%	4	1%	77	14%	110	20%	53	10%	556
<i>Please explain how they show favoritism</i>															
relationships	1	0%	3	1%	1	0%	3	1%	31	15%	40	19%	27	13%	
DBE status			1	0%					5	2%	6	3%	4	2%	
performance	2	1%	4	2%	2	1%	1	0%	7	3%	16	8%	6	3%	
prior experience	5	2%	3	1%	6	3%	3	1%	38	18%	57	27%	38	18%	
price			1	0%	1	0%			1	0%	3	1%	2	1%	
qualifications	1	0%	1	0%					2	1%	4	2%	2	1%	
location							1	0%	1	0%	2	1%	2	1%	
size/capacity							1	0%			1	0%			208
<i>How frequently have prime contractors delayed payment for your subcontractor work?</i>															
Very Often	3	1%	3	1%	5	1%	1	0%	21	4%	35	6%	32	6%	
Sometimes	3	1%	13	2%	4	1%	2	0%	43	8%	70	13%	55	10%	
Seldom	7	1%	6	1%	10	2%	6	1%	69	13%	102	19%	81	15%	
Never	6	1%	11	2%	7	1%	4	1%	50	9%	79	15%	44	8%	
No Response	2	0%			3	1%	2	0%	21	4%	28	5%	13	2%	539

**EXHIBIT 8-8 (Continued)**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**TELEPHONE SURVEY**  
**SUBCONTRACTING EXPERIENCE**

Demographic	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Non M/WBE		Total Respondents
<i>Rate experience in general with prime contractors worked with since 1999</i>															
Excellent	6	1%	4	1%	7	1%	2	0%	49	9%	71	13%	61	11%	
Good	11	2%	21	4%	12	2%	10	2%	102	19%	161	30%	113	21%	
Fair	2	0%	5	1%	4	1%			24	4%	38	7%	36	7%	
Poor	1	0%	1	0%	1	0%			6	1%	10	2%	6	1%	
No Response	1	0%	1	0%	3	1%	3	1%	19	4%	27	5%	11	2%	534
<i>Did you provide a bid/quote but the prime never responded?</i>															
Yes	11	2%	16	3%	15	3%	11	2%	115	22%	177	33%	117	22%	
No	10	2%	14	3%	11	2%	4	1%	66	12%	108	20%	93	18%	
Don't know	1	0%	1	0%	1	0%	2	0%	18	3%	23	4%	13	2%	531
<i>Did you provide a bid/quote but the prime never responded?</i>															
Yes			4	1%	3	1%			7	1%	14	3%	17	3%	
No	21	4%	27	5%	23	4%	15	3%	174	33%	272	51%	196	37%	
Don't know	1	0%			1	0%	2	0%	18	3%	22	4%	10	2%	531
<i>Were you pressured to lower a quote on a bid?</i>															
Yes	9	2%	9	2%	8	2%	8	2%	64	12%	103	19%	81	15%	
No	12	2%	22	4%	18	3%	7	1%	117	22%	183	34%	131	25%	
Don't know	1	0%			1	0%	2	0%	18	3%	22	4%	11	2%	531
<i>Were you paid less than the negotiated amount?</i>															
Yes	2	0%	10	2%	8	2%	2	0%	36	7%	60	11%	50	9%	
No	19	4%	21	4%	18	3%	13	2%	146	27%	227	43%	161	30%	
Don't know	1	0%			1	0%	2	0%	17	3%	21	4%	12	2%	531
<i>Were you dropped from the project after a prime was awarded the contract?</i>															
Yes	5	1%	7	1%	4	1%	5	1%	41	8%	65	12%	57	11%	
No	16	3%	23	4%	21	4%	10	2%	139	26%	218	41%	154	29%	
Don't know	1	0%	1	0%	2	0%	2	0%	19	4%	25	5%	12	2%	531
<i>Did you complete the job and payment was substantially delayed?</i>															
Yes	9	2%	11	2%	14	3%	4	1%	92	17%	136	26%	112	21%	
No	12	2%	20	4%	12	2%	11	2%	90	17%	151	28%	102	19%	
Don't know	1	0%			1	0%	2	0%	17	3%	21	4%	9	2%	531
<i>Did you complete the job and never receive payment?</i>															
Yes	1	0%	4	1%	5	1%	1	0%	22	4%	34	6%	47	9%	
No	20	4%	27	5%	21	4%	14	3%	160	30%	253	48%	167	31%	
Don't know	1	0%			1	0%	2	0%	17	3%	21	4%	10	2%	532
<i>Did you do different and less work than specified in the contract?</i>															
Yes	10	2%	10	2%	10	2%	6	1%	74	14%	115	22%	93	17%	
No	11	2%	21	4%	16	3%	9	2%	107	20%	171	32%	121	23%	
Don't know	1	0%			1	0%	2	0%	18	3%	22	4%	10	2%	532
<i>Were you held to higher standards than other subs on the job?</i>															
Yes	2	0%	5	1%	5	1%	2	0%	18	3%	34	6%	38	7%	
No	18	3%	24	5%	21	4%	13	2%	155	29%	241	45%	158	30%	
Don't know	2	0%	2	0%	1	0%	2	0%	26	5%	33	6%	28	5%	532

### **8.5.2 Results from the Focus Groups, Interviews, and Public Hearings**

There were a few comments about the subcontracting experience in the focus groups. A few participants stated that to be a subcontractor you had to be in a niche. Some shared experiences about partnering with larger companies during the bidding process however that has decreased in the last five years. Subcontractor payments were not a major issue for focus group participants.

- “That's why, in the past, because ODOT has the goal set, we could always go to the prime. You talking to them constantly, you know, basically through networking. Somebody say, okay, well, we have this project coming up. Would you like to team with us, because they have the 10 percent or 15 percent goal.”
- Some non DMWBE prime contractors stated they felt “primes would actually use DBE subs if there were no goals. There are very good quality DBEs that do the same line of work as we do and they get their jobs. When they have the lowest competitive, lowest responsible, most responsive bid, regardless of the goal...”

From personal interviews:

- A certified goods and services firm stated that the firm does more work outside Oregon than in the state. She does not think certification has helped her business and familiarity is the key factor in the willingness of primes to use small and minority businesses. Access to supplies and other resources can be significant challenge and smaller businesses must continue to prove themselves and emphasize quality.
- A certified ESB professional services engineering firm stated that ESB status has been helpful. There is a network based on relationships, name recognition, preferences for certain firms, and insider influence. A major problem is that larger companies are hiring former ODOT employees which give them greater access and an upper hand in the contracting process. Finally, it was stated that without goals there is no economic incentive to use small businesses since you cannot “mark up” subcontractors.
- A former certified WBE professional services/environmental consulting firm stated they had done work on multiple ODOT contracts as a subcontractor with prime engineering firm. This firm stated during the interview that they are now certified as an SBE as result of a merger two-three years ago. Interviewee contends that there is no economic incentive to use DMWBEs in the absence of goals or other requirements.

**8.6 Discrimination**

**8.6.1 Survey Results**

- Over 26.4 percent of women and minority respondents reported experiencing discriminatory behavior from private sector organizations. The group with the highest percentage reporting discriminatory behavior in the private sector was African Americans (52.2 percent).
- Of all respondents, 46.5 percent of the M/WBEs agreed that there is an informal network of prime and subcontractors in the public and private sectors in Oregon. As a comparison, only two percent of non M/WBEs agreed that there existed an informal network of prime and subcontractors in Oregon.

**EXHIBIT 8-9  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION  
TELEPHONE SURVEY  
BY ETHNICITY**

Demographic	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Non M/WBE		Total Respondents	
"There is an informal network of prime and subcontractors in the public and private sectors of Oregon."																
Strongly Agree	8	3%	7	2%	7	2%	4	1%	33	10%	60	19%				
Agree	11	3%	15	5%	10	3%	11	3%	100	31%	148	47%	2	1%		
Neither Agree nor Disagree	1	0%			1	0%					13	4%	15	5%	1	0%
Disagree	1	0%	5	2%	5	2%	2	1%	22	7%	35	11%	1	0%		
Strongly Disagree			1	0%			1	0%	4	1%	6	2%				
No Response/Don't know	2	1%	3	1%	7	2%	2	1%	36	11%	50	16%			318	

- Women and minority survey respondents answered our questions regarding barriers to doing business with ODOT identified the following key issues:
  - Bid bond requirements (17.4%);
  - Size of contracts (37.1%);
  - Limited information received on pending projects (37.7%);
  - Time allotted to prepare bids and quotes (34.7%);
  - Expenses associated with bid preparation (33.9%);
  - Pre-qualification requirements (22.7%);
  - Insurance (16.1%);
  - Performance bond requirements (19.7%); and
  - Rigid bid specifications (27.6%)
- Nonminority male respondents generally reported the same concerns with the similar frequencies. The most substantial difference was on size of contracts, with 29.9 percent of nonminority

males reporting contract size as a barrier, as compared to 37.1 percent of women and minority respondents.

- Women and minority subcontractors reported similar problems in subcontracting as nonminority males. About 11.0 percent of women and minority reported being held to a higher standard, but 17.0 percent of nonminority males reported the same complaint.

## **8.6.2 Results from the Focus Groups, Interviews, and Public Hearing**

### **Perceptions of Discrimination**

There were perceptions of discrimination by some of the interviewees. Incorporated in the appendices are written testimony from public hearing participants.

#### **(Appendix U)**

### **Private Sector Discrimination**

There were mixed comments about discrimination in the private sector. On the one hand, most M/WBEs preferred work in the private sector and with other public agencies in Oregon. Firms reported that in the private sector work was easier to obtain and work was value-based.

### **Informal Networks**

There was a general consensus amongst participants that an informal network of firms existed, constituting a barrier to D/M/WBE and ESB firms. Many participants deemed this a natural part of how business is done in Oregon.

- A certified DMWBE Hispanic owned telecommunication contractor stated during a one on one interview that he had been in business for about 30 years; has done work for state governments around the country including Alaska, California, Washington, and Idaho. He stated that during an MBE Award affair the Governor of Oregon inquired of this firm's work with the state of Oregon. The interviewee explained that he had not done work with the state. The Governor asked Lydia Munoz to set up meeting with the interviewee. During the meeting, a man joined (couldn't remember his name) who was responsible for telecommunication contracts. This man indicated "he was not interested in working with a minority firm, only large players."

- A certified DMWBE, Asian American owned firm interviewee believes that sole proprietorship status has been a bigger challenge than minority status in working for the public and private sectors because some are not willing to take risk on a small, one-person firm. Lack of capital and lack of access to key decision makers can be barriers. Also feels that networks play a critical role and they are alive and well in Portland.

## **8.7 D/M/WBE Program**

### **8.7.1 Results from the Focus Group, Interviews, and Public Hearing**

#### **D/M/WBE Program**

- The reason they hired us is because they have that mandatory goal 10, 15 percent of whatever. But right now, the goal is zero. So basically they have no need to use us. Look we enter very competitive, you know, design companies. We are -- well qualified for all kinds of ODOT work, bridge work, highway work. But as a prime, if ODOT doesn't have a goal for them to meet, I'm sure they can have – any firm with the qualification, like us to finish the job, and they make the profit without needing us to help them out, because the goal is zero. Because the majority of our projects transition from previous contracts, which happened three, four years ago, when they had a goal. But ...for the new jobs we will be picked up pretty much randomly. You know, the reason we are on some of those because we're so good.
- But right now because the goal is zero, they basically they may pick you up randomly, once in a while, but there's no guarantee work.
- A DMBE stated during a one on one interview that he does not believe certification has helped. He has tried to prime and subcontract with ODOT without any success – has participated in outreach, workshops, etc. but nothing has yielded any contracts.
- A majority owned construction firm stated that “even when I put in a percentage of small business enterprise, all the contractor has to do is make a good-faith effort. I've seen them make good-faith efforts over and over again, and never really picking anyone.
- A majority owned professional service firm (non A/E) stated they “are doubly disadvantaged in their pursuit of ODOT work. First they are not DMWESB firm and a non-engineering firm...They hear constantly from ...engineering firm teaming partners that they would like to use us on a job, but that the DMWESB goals are getting in the way of that.”



- A majority owned professional service (non A/E) stated that “the root of the issue is that there are no ODOT requirements that DMWESB goals need to be met in proportion to the type of services requested. For example, it is believed that if a project is 80 percent engineering and 20 percent specialty, then that same percentage breakdown should be applied to the use of DMWESB firms...the technical skill sets of the current DMWESB firms doing business with ODOT to see that ODOT’s practices are actually disadvantageous to the DMWESB business sector...you will notice that a disproportionate number of these firms are relegated to ancillary, support roles and services on ODOT jobs, such as public involvement, environmental, cultural resources, air and noise analyses, etc.; relatively little of ODOT’s DMWESB dollars are going to grow and support the core services that ODOT needs—namely civil and structural engineering.”
- An African American construction contractor stated that ODOT will not look at historical patterns and resources. They tend to avoid the use and recommendations of previous Regional Disparity Study and they are unwilling to interview and seek the recommendations of previous administrators and staff or chronicle the history of issues and problems.
- An African American electrical contractor who had been in business for more than ten years testified that his firm had single project bonding of two million dollars and an aggregate bonding limit of six million dollars. “One of the things that ODOT did, and its contractors tend to do is we’ll submit a bid to a general contractor; they’ll have us go ahead and include other scopes of work, other divisions of work, whether its excavation. Our prices then turn out to be higher than the one that was submitted, and then they’ll say, we’re sorry, you don’t have this project; and they’ll turn and give it to the contractor they have already chosen.”
- A couple of non DMWBE firms stated they believe in inclusion and there have been some success stories however they wished for more emphasis on good-faith efforts, efforts to include people, efforts to break down barriers and less effort on just simply meeting goals...[we] put together put together a package that is complete, its competitive, it’s low; and we’re told we don’t get the job because a minority contractor they needed to use to be able to meet the mandatory goal.” The same firms recommended “they would like to see an opportunity for a prime contractor to do a good-faith effort on trying to include more DBEs, to make different parts of the project available to DBEs, to break up the project into smaller, more economical packages that will allow for more inclusion other than just trying to meet the goal.”
- It was testified during the public hearing by an African American owned contractor and later collaborated by a couple of African American professional services firms that the “Supportive Services

program is not connected to any outcomes that's going to make anybody successful or build economic capacity. There's no relationship between supportive series and people achieving goals and becoming successful on ODOT projects. It's a program that is designed to produce something in and of itself, for itself; doesn't do much for the total program."

## **8.8 Conclusions**

Overall, the anecdotal findings revealed that D/M/WBEs are competing in a difficult environment in Oregon. While the owners of minority and women owned business firms reported impressive educational achievements, too many are highly concentrated in the public sector but not necessarily with ODOT, and their income is largely within the less than \$1million range.

Many commented that ODOT is still operating the same as they did before the previous disparity study. African Americans tended to feel that they are being shut out by ODOT and have gone on to work for other public agencies within Oregon, specifically with TriMet and the City of Portland. It was expressed that there is an inconsistency with project engineers between the regions. It was stated by non-Minority and D/M/WBE firms alike that should you alienate the project engineer you are in serious trouble. It was stated the ODOT has a long memory i.e. Workhorse Construction.

Between the telephone survey, focus group, public hearings and personal interviews, we interviewed 719 business owners or representatives that have done business with—or attempted to do business with—the State of Oregon Department of Transportation. In comparison, the Ninth Circuit Court of Appeals accepted anecdotal evidence from 57 interviewees in *Coral Construction*.

## **RECOMMENDATIONS**

- Implement performance evaluation or assessment of all contractors within every contract, and make results available to public by request. Award contracts only to those firms who have satisfied the assessment scoring criteria/percentages (in addition to other selection criteria).

- Reassess the On-the-Job Training Program (OJT). Currently, recruitment can only be done out of one training college in Portland, which makes it extremely difficult and inefficient to recruit and retain apprentices in Regions 3-5 (due to the geographic distance). Allow for firms to provide in-house training programs and for smaller firms to train apprentices at lower rates.
- Make efforts to distribute contracts more equally to smaller firms, and enforce policy with procedures. Categorize projects in a manner that would allow smaller firms to participate: contract smaller-scale projects out to smaller contractors, medium-scale projects to medium size firms, and large-scale projects to large firms. Break up large-scale contracts into smaller projects in order to allow bidding from smaller, regionally-based firms.
- Consider geography in selection: contract to regional firms first, and require prime contractors to subcontract regionally.
- Include a second-tier of regional primes in engineering selection lists based on smaller size firms and geographic location per Region (rather than the current policy of selecting three firms every three years, and allowing these same firms repeated terms).
- Make bonding requirements more reflective of the size of the project in order to enable smaller firms to compete.
- More and better education for all firms regarding good faith efforts and doing business with ODOT
- Duplicate processes and practices implemented by Tri-Met and City of Portland especially regarding outreach and breaking out projects for competition among small firms. Suggested implementing a “Sheltered Market Program” similar to the City’s of Portland’s where they recruit small MWSBEs to be in their program for a certain period of time.
- Duplicate a joint venture, mentor/protégé program similar to the City of Orlando requiring large firms to team with smaller firms to go after large projects.