
EXECUTIVE SUMMARY

In January 2007, MGT of America, Inc. (MGT), was retained to conduct a Disadvantaged Business Enterprise Disparity Study for Oregon Department of Transportation (“ODOT”) to determine whether there was a compelling interest to justify a disadvantaged business enterprise (DBE) program for ODOT. MGT found that DBEs were substantially underutilized as prime contractors in construction and construction-related professional services. In addition, African American and Asian-owned firms were under-utilized as construction subcontractors. The study provides factual predicate evidence for the selective use of project goals for African American and Asian construction subcontractors.

The following findings and recommendations are excerpts from Chapter 9.0 and are highlighted here for your consideration. Chapter 9.0 of this report contains more detailed findings and recommendations, along with associated best practices.

FINDING 9-1: DBE Prime Utilization and Availability

During the current study period, twenty-two DBEs won 77 prime construction contracts for \$109.5 million (5.63 percent of the total). Ninety-two DBEs won 332 prime construction-related professional service contracts for \$47.9 million (3.84 percent of the total) over the study period. The 1994 disparity study (covering ODOT Region 1 FY 1992-FY 1994) found that for federally funded construction prime contracts, three DBEs were awarded \$202,434, or 0.22 percent of total ODOT spending on federally funded prime construction contracts.

DBEs constituted 19.15 percent of ODOT prime construction bidders and 47.77 percent of ODOT prime construction-related professional services vendors. Disparity existed for all groups in the DBE program, except for African American construction prime contractors, for whom there was no prime bidder availability.

FINDING 9-5: DBE Subcontractor Utilization and Availability.

Over the current disparity study period 175 DBEs won 2,098 construction subcontracts for \$261.2 million, 36.7 percent of ODOT construction subcontractor spending over the period (**Exhibit 9-1**). Over \$152.2 million was awarded to women owned firms, 21.4 percent of ODOT construction subcontractor spending. DBEs won \$29,562 in professional service subcontracts over the study period, but the data was incomplete.

DBEs constituted 29.5 percent of ODOT construction subcontractor bidders, submitted 67.9 percent of the number of bids on construction subcontracts, and constituted 44.9

percent of ODOT subcontractor construction-related professional services vendors. DBE subcontractor bidder and vendor availability is shown in **Exhibit 9-1** below. Substantial disparity for construction subcontracting existed during the study period for Asians and African Americans as well as for women-owned firms in Region 1.

**EXHIBIT 9-1
DBE SUBCONTRACTOR UTILIZATION
OREGON DEPARTMENT OF TRANSPORTATION
FY 2000-FY 2007**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	Total
Construction Subcontractor Utilization	\$928,309	\$43,076,090	\$6,662,421	\$58,325,821	\$152,264,749	\$261,257,390
	0.13%	6.06%	0.94%	8.20%	21.41%	36.7%
Percentage of Construction Subcontractor Bidder Availability	2.28%	3.58%	2.60%	2.82%	18.22%	29.50%
Percentage of Construction Subcontractor Bids Submitted	0.80%	5.02%	1.88%	19.45%	40.80%	67.94%
Percentage of Construction-Related Professional Services Subcontractor Vendors	3.08%	3.55%	5.80%	0.95%	31.60%	44.97%

Source: Utilization findings are taken from the exhibit previously shown in Chapter 4.0. ODOT Bidders, Master vendor database

FINDING 9-8: DBE Utilization on Non-Goal Projects

ODOT does not place goals on state-funded projects and on certain federally-funded projects. DBE construction subcontractors won \$33.1 million, 36.5 percent of ODOT spending on state-funded projects between FY 2000 and FY 2007. In FY 1992-94 DBEs were awarded 42 contracts for \$2,805,467, or 38.96 percent of subcontractor spending on state-funded subcontracts.

DBEs won \$65.5 million, or 38.3 percent of ODOT spending on federally-funded projects without DBE goals between FY 2000 and FY 2007. On the other hand, in FY 2007, following ODOT's suspension of race- and gender-conscious DBE goals, ODOT DBE construction subcontractor utilization fell almost 30 percent, from 38.3 percent (FY 2000 through FY 2006) to 26.9 percent in FY 2007, moderately below DBE subcontractor bidder availability.

The utilization of African American firms on projects with no DBE goals was different from other women and minority groups. Over the study period African American firms only won one construction subcontract on state-funded projects (in the year 2000), two

construction subcontracts on federally-funded projects without DBE goals (in 2005 and a very minor subcontract in 2003), and no construction subcontracts in 2007 following the suspension of race conscious goals by ODOT. Some of the low utilization of African American construction subcontractors was due to lower levels of bidding. Nevertheless, African American construction subcontractor percentage utilization was also below the percentage of bids submitted by African American subcontractors.

RECOMMENDATION 9-6: DBE Subcontractor Project Goals

The evidence supporting the immediate restoration of race- and gender conscious DBE project goals in construction is limited. Since the suspension of race conscious goals there has been a decline in DBE construction subcontractor utilization, but that decline is thus far not substantially below DBE subcontractor availability. Moreover, utilization of DBEs on state-funded contracts was not significantly different from DBE utilization on federally-funded contracts with DBE goals. In addition, DBE subcontractor utilization of federally-funded construction projects was not significantly different from DBE subcontractor utilization on projects without goals. The 1994 disparity study also found strong DBE subcontractor utilization on state-funded ODOT projects in Region 1.

ODOT should closely monitor DBE construction subcontractor utilization. ODOT should consider placing race- and gender-conscious goals on projects, particularly large projects in the event that DBE utilization begins to fall significantly below DBE subcontractor availability.

Given the different experience of African American subcontractors on projects without goals ODOT should consider the periodic use of DBE subcontractor goals for African American construction firms in procurement areas and DOT regions where there is demonstrated African American subcontractor availability. The substantial underutilization of Asian subcontractors also justifies the selective use of project goals for Asian owned firms, although there is less factual predicate evidence for targeted goals for Asian construction subcontractors. Such a policy of targeted project goals is consistent with the recent Appeals Court decision in *Western States Paving*.

ODOT should also interface with agencies in the Portland area that have had greater success with procuring the services of African American construction subcontractors, such as Tri-Met, for strategies for improving ODOT utilization of African American construction subcontractors. On construction projects that are procured through an RFP process and are not purely low bid, ODOT should request bidders' history in contracting with DBEs in general and African American firms in particular.

COMMENDATION AND RECOMMENDATION 9-7: ESB Program for Prime Contracts*

ODOT should be commended for establishing and expanding its ESB program, as well as establishing the Small Contracting (Pilot) Program. ODOT should also be commended for establishing a two-tier ESB size standard in 2006. This approach to size standards is in line with best practices by the federal government as well as several state and local governments.

In particular ODOT should consider raising the set-aside limit from \$50,000 to \$500,000 for the ESB program and the Small Contracting program and changing the pre-

qualification requirements for those contracts. The ESB program should increase its focus on African American firm utilization through the ESB program.