SECTION VII.
Exploration of Possible Causes of Any Disparities

Three key questions emerge from the disparities observed in MBE/WBE utilization on ODOT contracts described in Section VI:

A. Are disparities found in some regions of the state and not in others?

B. Why are there disparities for ODOT construction contracts?

C. Why are there disparities for ODOT engineering contracts?

Answers to these questions may be relevant as ODOT considers whether all or how much of its overall annual DBE goal can be met through race- and gender-neutral means and what program elements may be needed in implementing the federal regulations. In accordance with the Federal DBE Program, results may also help the Department identify the specific racial/ethnic/gender groups that might be included in any future race- or gender-conscious programs.

A. Are disparities found in some regions of the state and not in others?

The study team examined disparity analysis results individually for five regions of Oklahoma:

- Northeast;
- Southeast;
- Central;
- Panhandle; and
- Southwest.

ODOT's state-funded contracts were the focus of this regional analysis, as no DBE contract goals applied to such projects. Section VI identified substantial disparities for African American-, Asian-Pacific American-, Subcontinent Asian-American- and Hispanic American-owned firms when examining all state-funded construction and engineering-related contracts.

For each region, BBC identified substantial disparities for each of the above groups when examining state-funded contracts. Appendix K provides detailed utilization and disparity results for state-funded contracts for each region, beginning with Figure K-37. It does not appear that disparities are found in some regions of the state and not in others.

B. Why are there disparities for ODOT construction contracts?

BBC examined several questions concerning disparity results for ODOT construction contracts:

1. Are there different results for prime contracts and subcontracts?

2. Are there disparities in the use of MBE/WBE prime contractors for small contracts?

3. Are there different results for subcontracts on FHWA-funded contracts and state-funded contracts?

4. Does ODOT award contracts to "the same large firms"?

5. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results?

6. Does ODOTs bid or other processes for construction contracts explain any of the disparities?

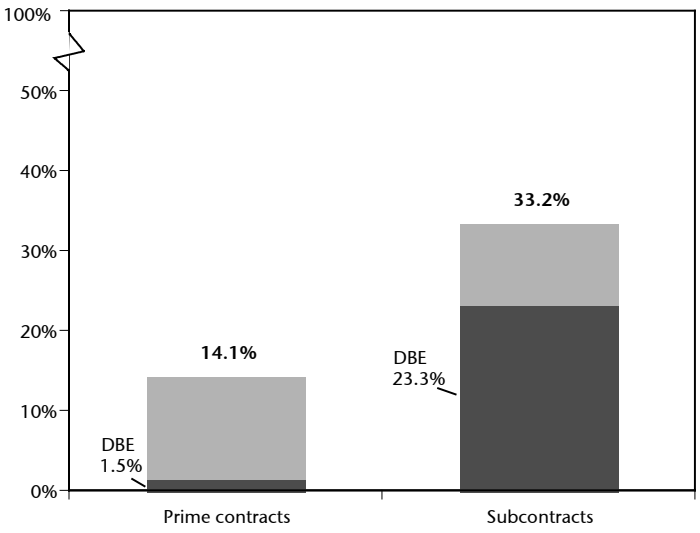
1. Are there different results for prime contracts and subcontracts? BBC explored differences in MBE/WBE utilization for construction prime contracts and subcontracts.

Utilization. As shown in Figure VII-1 MBE/WBE utilization was much higher for subcontracts (33%) on ODOT construction projects than on prime contracts (14%). Because the majority of ODOT construction projects (and contract dollars) during the study period were FHWA-funded, DBE contract goals affected many of the contract dollars examined in Figure VII-1.

Figure VII-1.
MBE/WBE and DBE share of FHWA- and state-funded prime contract and subcontract dollars on ODOT construction projects, July 2004–June 2009

Note:
Number of contracts/subcontracts analyzed is 1,759 for prime contracts and 5,534 for subcontracts.
For more detail and results by group see Figures K-14 and K-23 in Appendix K.

Source:
BBC Research & Consulting from ODOT contract data.



Disparity analysis. Figure VII-2 shows disparity indices for construction prime contracts (darker bars) and subcontracts (lighter bars) for each racial/ethnic/gender group. Because relative MBE/WBE availability is also substantially higher for construction subcontracts (22%) when compared with prime contracts (9%), the disparity results for MBE/WBEs overall is similar for construction subcontracts (index of 154) and prime contracts (index of 152).

BBC identified no construction prime contract dollars going to African American-, Asian-Pacific American- or Subcontinent Asian American-owned firms. The disparity index for African American-owned firms was 0. Because no Asian-Pacific American- or Subcontinent Asian-owned firms were available for ODOT construction prime contracts, disparity indices for these two groups is "parity" or "100" (see Section VI for further discussion of BBC's approach when both utilization and availability are zero).

BBC identified $5.1 million of construction prime contract dollars (11 contracts) going to Hispanic American-owned firms. The resulting utilization — 0.2 percent — was less than the 0.6 percent availability for Hispanic American-owned firms for construction prime contracts. The disparity index for this group was 39, indicating a substantial disparity.

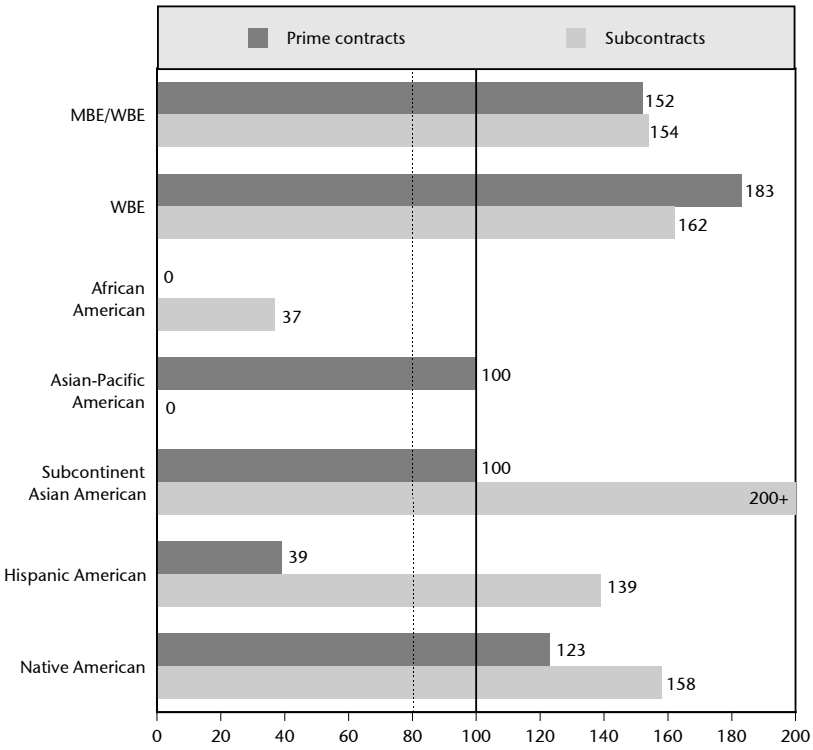
When considering construction prime contracts, utilization of white women-owned firms (10.4%) and utilization of Native American-owned firms (3.5%) exceeded availability for these groups.

Figure VII-2 also presents disparity indices for construction subcontracts. Even with application of DBE contract goals for most of these construction projects, there were still disparities in the utilization of African American- and Asian-Pacific American-owned firms as subcontractors.

Figure VII-2.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FHWA-and state-funded construction projects, July 2004–June 2009

Note:
Number of contracts/subcontracts analyzed is 1,759 for prime contracts and 5,534 for subcontracts.
For more detail and results by group see Figures K-14 and K-23 in Appendix K.

Source:
BBC Research & Consulting.



2. Are there disparities in the use of MBE/WBE prime contractors for small contracts?
The size of ODOT prime contracts may present a barrier for certain MBE/WBE groups. A number of contractors interviewed by the study team indicated that size of ODOT contracts was a barrier to bidding (see Appendix I).

- An interviewee representing a Hispanic American male-owned construction firm reported that the State has let contracts in excess of $10 million and only one company

has the bonding capacity to bid on such a job. He reported that if the State were to break down such a contract into $5 million increments that would provide him with the opportunity to bid.

- A Native American male owner and president of a DBE-certified general contracting company reported that he is aware of some attempts to segment large contracts, but he said that he still thinks that it is a big problem and that bundling is a big barrier to small contractors of any race or gender.

- A white male vice president of a white female-owned excavating firm stated that he believes the breaking up of large contracts into smaller pieces would be helpful for small businesses including MBE/WBE/DBEs.

To explore this issue, BBC examined MBE/WBE utilization and availability as prime contractors for construction contracts of $5 million or less.

As shown in Figure VII-3, utilization of MBE/WBEs as prime contractors was somewhat higher for small construction contracts (18%) than all contracts (14%).

Figure VII-3.
MBE/WBE and DBE share of FHWA- and state-funded construction prime contract dollars by contract size, July 2004—June 2009

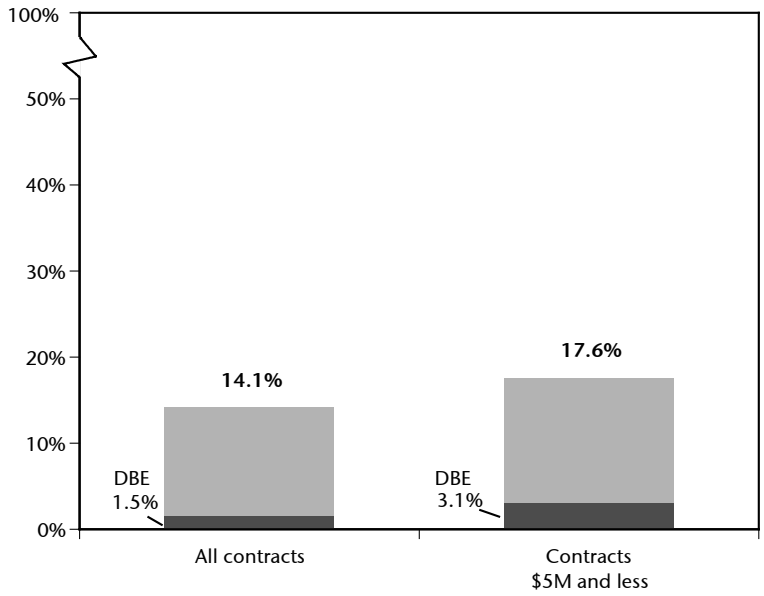
Note:

Number of all prime contracts analyzed is 1,759 for all contracts and 1,612 for contracts of $5 million and less.

For more detail and results by group see Figures K-14 and K-50 in Appendix K.

Source:

BBC Research & Consulting from ODOT contract data.



BBC's disparity analysis shows similar results for small contracts (see Figure K-50 in Appendix K) as for all construction contracts (see Figure VII-2). Analysis of small construction prime contracts indicates substantial disparities for African American- and Hispanic American-owned firms.

3. Are there different results for subcontracts on FHWA-funded contracts and state-funded contracts? Opportunities for minority- and women-owned firms as subcontractors on ODOT construction contracts may be affected by whether the DBE contract goals program is applied (for contracts that are FHWA-funded). A number of certified DBEs interviewed in the study indicated that they would be used on ODOT contracts that had DBE goals and would not be used when no goals were applied (see Appendix I). For example:

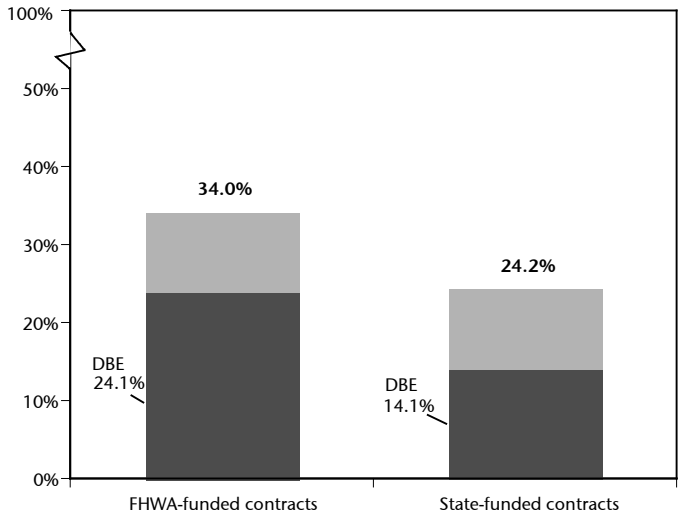
- The African American male and female owners of a DBE-certified construction firm stated, "If there is no DBE goal on that project, the average prime won't even consider you because he doesn't need you [to satisfy a goal]."

- Another interviewee representing a minority business development agency stated that the prime contractors that use his clients on public sector work typically do not use the firms for private sector work. He stated the prime contractors solely use his clients to meet the DBE goals. He stated that it does rarely occur that the prime contractors that have utilized DBE firms and found them to be capable hire the firm again. He said, "It happens, not often, but it happens."

BBC explored differences in MBE/WBE utilization as subcontractors as well as disparity results for FHWA- and state-funded contracts.

Utilization. As shown in Figure VII-4, MBE/WBE utilization on construction subcontracts was lower for state-funded than FHWA-funded contracts. MBE/WBEs received one-quarter of subcontract dollars on state-funded projects compared to one-third of FHWA-funded projects. DBE-certified firms accounted for a smaller portion of subcontract dollars on state-funded contracts (14%) compared with FHWA-funded contracts (24%).

Figure VII-4.
MBE/WBE and DBE share of FHWA- and state-funded construction subcontract dollars, July 2004—June 2009



Note:
Number of subcontracts analyzed is 4,511 for the FHWA-funded contracts and 1,023 for state-funded contracts.
For more detail and results by group see Figures K-24 and K-25 in Appendix K.

Source:
BBC Research & Consulting from ODOT contract data.

Disparity analysis. Figure VII-5 examines disparity results for subcontracts on state-funded and FHWA-funded construction contracts. There were disparities between utilization and availability for both state-funded subcontracts (lighter bars) and FHWA-funded subcontracts (darker bars) for African American- and Asian-Pacific American-owned firms. There were also disparities for Hispanic American-owned firms for state-funded subcontracts (no goals program). When examining subcontracts on FHWA-funded projects, there were no disparities for Hispanic American-owned firms. This may be due to the DBE contract goals program applied to these contracts. DBE-certified firms accounted for nearly all of the utilization of Hispanic American-owned firms as subcontractors on FHWA-funded construction projects (see Figure K-24 in Appendix K).

Utilization of Native American- and white women-owned firms as subcontractors was in line with availability on state-funded construction contracts and substantially exceeded availability for FHWA-

funded contracts. Utilization of Subcontinent Asian-owned firms substantially exceeded availability for both state- and FHWA-funded subcontracts.

Figure VII-5.
Disparity indices for MBE/WBE utilization as subcontractors on FHWA-and state-funded construction projects, July 2004–June 2009

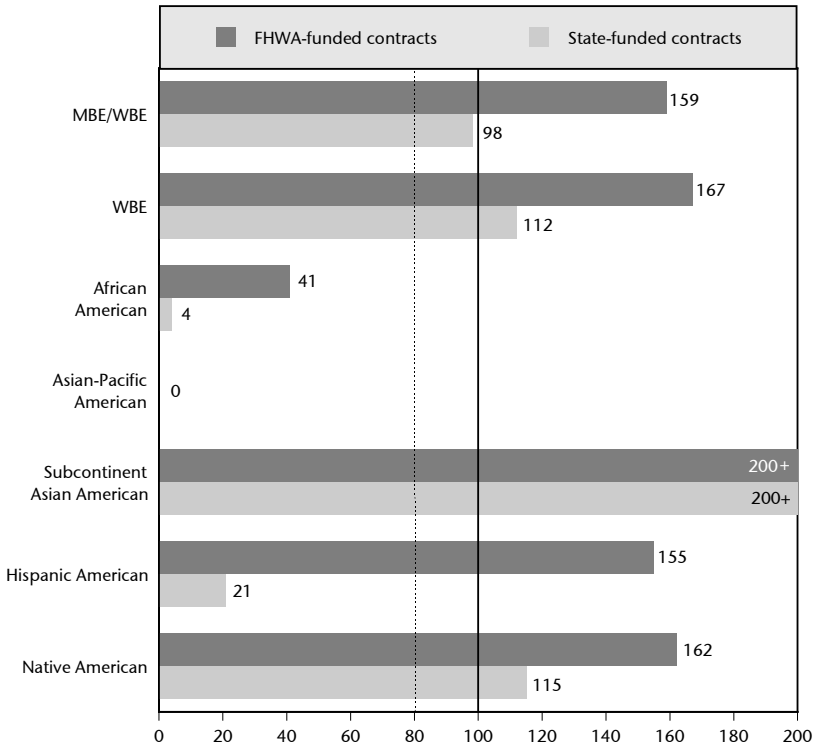
Note:

Number of subcontracts analyzed is 4,511 for the FHWA-funded contracts and 1,023 for state-funded contracts.

For more detail and results by group see Figures K-24 and K-25 in Appendix K.

Source:

BBC Research & Consulting from ODOT contract data.



In sum, for certain MBE/WBE groups there were marked differences in opportunities as subcontractors between construction contracts with DBE goals and those without DBE goals:

- Results of the disparity analysis indicate that DBE contract goals for ODOT construction contracts had a considerable effect on the participation of Hispanic American-owned firms as subcontractors.

- For WBEs and Native American-owned firms, utilization substantially exceeded availability for FHWA-funded subcontracting. For state-funded construction subcontracts, utilization of WBEs and Native American-owned firms was in line with what would be expected based on availability.

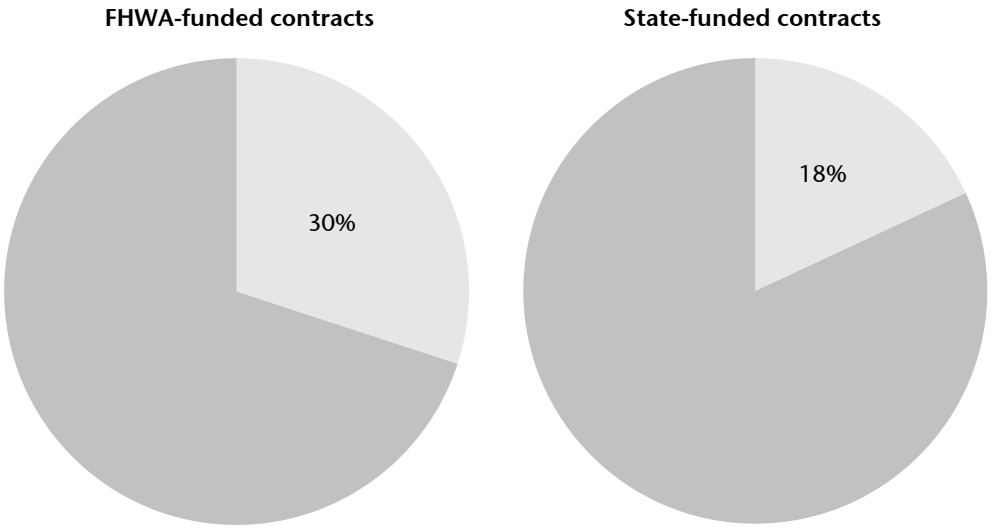
- However, there were substantial disparities for African American- and Asian-Pacific American-owned firms on ODOT construction subcontracts with or without application of DBE contract goals.

- Although utilization of Subcontinent Asian American-owned firms as subcontractors on ODOT construction contracts was very small, there was no indication of disparities with or without DBE contract goals.

BBC also considered whether there was evidence that prime contractors self-performed more of the work (and subcontracted less of the project) when there were no DBE contract goals. As shown in

Figure VII-6, subcontracts accounted for 30 percent of the dollars of FHWA-funded construction contracts. Just 18 percent of state-funded construction contract dollars went to subcontractors (including MBE/WBE and non-MBE/WBEs).

Figure VII-6.
Subcontracting as a percentage of total construction contract dollars on FHWA-and state-funded contracts, July 2004–June 2009



Source: BBC Research & Consulting from ODOT contract data.

4. Does ODOT award contracts to "the same large firms"? In-depth interviews with firm owners and managers indicated that some believe that "the same large firms" typically receive ODOT contracting opportunities. BBC examined participation of different types of firms in construction subcontracts and prime contracts.

Participation as subcontractors. When examining all firms receiving subcontracts on ODOT construction contracts, it does not appear that the majority of subcontract dollars go to only a few firms.

BBC also researched this question for DBE firms. Together, three firms — Direct Traffic Control, Diamondback Steel Co., L.R. Toby Trucking — received about 30 percent of DBE subcontractor dollars on construction contracts during the study period. The top 15 firms combined represented two-thirds of DBE participation as subcontractors on construction contracts.

Participation as prime contractors. Overall, ODOT awarded approximately 35 percent of all construction prime contract dollars to five firms: TTK Construction, Haskell Lemon Construction, Becco Contractors, The Cumins Construction Co. and Sherwood Construction.

Two firms representing white woman-owned firms received more than 60 percent of all MBE/WBE construction prime contract dollars. Neither of these firms is DBE certified.

5. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results? The study team collected bid information for a stratified random sample of 61 construction contracts. In total, 189 bids were submitted for these contracts.

Relative number of bids from MBE/WBEs. MBE/WBEs submitted 18 (10%) of the 189 bids:

- Two bids (1%) came from Native American-owned firms;
- Sixteen bids (8%) came from WBEs; and
- No bids came from other MBE/WBE groups.

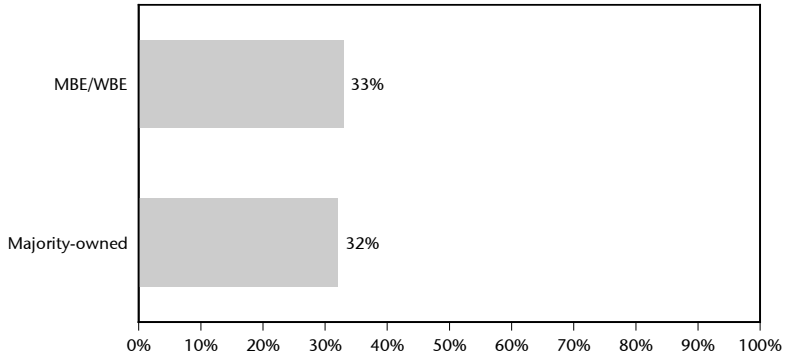
The proportion of bids from MBEs and from WBEs was low compared with the share of firms available for prime construction contracts that were MBEs (14%) and WBEs (14%), as discussed in Section IV.

Success of bids. As shown in Figure VII-7, 33 percent of MBE/WBE bids were winning bids. A similar percentage of bids from majority-owned firms (32%) were winning bids. There is no evidence from analysis of bids that MBE/WBE bidders were less likely to be successful than majority-owned firms.

Figure VII-7.
Proportion of bids on ODOT construction contracts that were winning bids, July 2004–June 2009

Note:
Based on random sample of 61 contracts (189 bids).

Source:
BBC Research & Consulting from ODOT contract records.



6. Do ODOT bid or other processes for construction contracts explain any of the disparities? ODOT has a low-bid system for awarding its construction contracts. However, a bid can only go to a low bidder if that bidder has met ODOT's prequalification, bonding and insurance requirements.

Notification of bid opportunities. The study team examined how ODOT notifies firms of opportunities to submit bids on construction contracts. For construction projects, ODOT posts bid opportunities known as "notice to contractors" on its website and advertises these opportunities in general circulation newspapers in the county where the project is located. Firms interviewed by the study team generally complimented ODOT on its efforts to make bidding opportunities known to potential bidders.

Even so, a number of interviewees recommended improvements to the notification process:

- Some interviewees reported that ODOT could do a better job of communicating with firms about construction opportunities within ODOT, including whom to speak with about these opportunities. For example, a white male co-owner of a transportation firm stated that more information on ODOT staff to contact when there were bid opportunities would enhance the availability and participation of small businesses. He said, "If I knew who to contact to bid on jobs, it would really help." Another interviewee represented by a white female president of a trucking company stated that ODOT should better notify the DBE firms of work opportunities by sending out bid sheets every month. She stated that ODOT should maintain more contact with the minority- and women-owned business to allow the firms to attempt to get work and submit bids.

- A number of interviewees commented on the overall communication efforts by ODOT. For example, an interviewee representing a white male-owned construction firm recommended that ODOT make full revisions to the website, better communicate with the public, and provide better responses to inquiries. Additionally, an interviewee representing a Hispanic trade association recommended that ODOT provide more outreach to the Hispanic community and that communications be bilingual.

Prequalification for type of work. It appears that there is no state law in Oklahoma requiring licensing of contractors for specific types of public works. Instead, ODOT prequalifies construction contractors for the types of work performed. BBC's analysis of the prequalification for type of work suggests that the process is relatively flexible.

The contractor seeking prequalification with ODOT must indicate the classes of work for which the contractor desires to bid.

- Contractors can and do request many classes of work and are typically approved for the requested classifications.

- An internal ODOT committee reviews this part of the prequalification application based on information the company has submitted concerning personnel, equipment, capital and experience, but does not verify the information submitted by contractors.

Lack of prequalification in a specific industry will not automatically disqualify a firm from being awarded a contract. Instead, ODOT will work with the firm to update the work class on the firm's prequalification application.

BBC examined whether there was evidence that ODOT's practice of prequalification disadvantaged minority- and women-owned firms.

- As of January 2010, there were 251 firms that had current ODOT prequalification for one or more types of ODOT construction prime contracts. Thirty of these firms (12%) were MBE/WBEs, less than one-half of what would be expected given the representation of MBE/WBEs among construction firms bidding as a prime contractor for public sector transportation contracts (28%).[1]

- However, MBE/WBE firms available for ODOT construction prime contracts were no more or less likely than majority-owned firms to report difficulties with prequalification.

- Firms conducting in-depth personal interviews with the study team most often reported no issues with ODOT's prequalification process. Some MBE/WBE firms discussed the difficulty in attempting to perform work for ODOT, and indicated that ODOT was not seen as open to small contractors or minority- and women-owned firms (see Appendix I).

Prequalification for size of contract. ODOT's process for prequalifying contractors for sizes of contracts is less flexible than its process for prequalifying for class of work:

- ODOT establishes a dollar limit for work performed for ODOT as a prime contractor at any one time. ODOT determines the limit, in part, on audited financial statements that contractors seeking to bid on ODOT construction contracts submit every two years.

- A firm's prequalified total is calculated by subtracting current liabilities from current assets, and then multiplying by 2.5.

- A firm is only able to bid on projects at or under the determined prequalification amount for that specific firm after subtracting the ODOT work for which they are currently under contract. For example, if a firm was prequalified for $100 million and they are currently contracted for a $50 million ODOT project, this firm could only bid on another project not to exceed $50 million.

However, ODOT considers contractors to be "fully qualified" if they have performed a minimum of three ODOT projects or projects worth $5 million dollars or more requiring prequalification (and the firm once was prequalified for at least one year). If a contractor is found to be "fully qualified," the contractor's certificate of qualification will be reissued to allow the contractor to bid on and be awarded projects to the extent of its bonding capacity. In effect, the prequalification limits only apply to firms that are new to ODOT contracting as a prime contractor or have been less successful winning ODOT prime contracts.

On its face, the ODOT system for "fully qualifying" firms would favor firms that had already been successful in obtaining ODOT prime construction contracts and disadvantage new firms and those

[1] See Section IV and Appendix C for a full discussion of the availability analysis.

that had been less successful in competing for these prime contracts. However, among prequalified firms in 2010, about the same share of MBE/WBEs as majority-owned firms were fully qualified by ODOT.[2]

- Among firms that had ODOT prequalification during the study period, MBE/WBEs were just as likely to be "fully qualified" as majority-owned firms.

- In BBC's telephone interviews with construction firms in the local marketplace, minority- and white female-owned firms were about as likely as majority-owned firms to report difficulties with the prequalification process (see Appendix F).

However, these comments were general in nature and were not focused on specific ODOT processes. A number of firms expressed their concern with the difficulty to win work with ODOT.

- Some interviewees expressed their difficulty in trying to win work with ODOT and other public agencies. For example, an interviewee representing a minority business development agency reported that it is easier to get work in the private sector. He indicated that he did not know why this was true, other than the "'Good Old Boy Network' is engrained in the public [sector]." He reported that "[contractors] know who they will and won't work with and who they will give opportunity to work. If somebody knows 'Joe' and Joe is handling procurement, you talk to Joe about giving your friend an opportunity, and Joe is going to give your friend an opportunity."

- Another interviewee representing an African American male owner of a trucking firm stated that prequalification requirements are a potential barrier for firms because of the requirement of prior experience, but minority firms never get the opportunity to work so they cannot develop any experience.

Bonding. ODOT requires firms to be bonded in order to submit bids on most of its construction contracts. There is some evidence that minority- and women-owned firms are disadvantaged in accessing bonding.

- Some interviewees reported that obtaining bonding and meeting bonding requirements are barriers to doing business. For example, a Native American male president of a WBE construction firm stated that he believes that problems with access to bonding are based on discrimination targeted at small firms. He noted that smaller firms get charged higher premium rates. Another firm representing a Hispanic male-owned concrete paving firm said that bonding requirements and access to lines of credit "exclude DBEs right off the bat" because most DBEs "cannot get a half a million dollar bond."

- Study team telephone interviews with local construction and engineering firms included a question about whether they had experienced barriers or difficulties associated with bonding. Minority- and women-owned firms were nearly twice as likely as majority-owned firms to report difficulties obtaining bonding. Some firms indicated that barriers

[2] As of 2009, 38 firms were fully qualified out of the 251 firms that ODOT had prequalified for construction prime contracts. Seven of the fully qualified firms were MBE/WBEs (including two DBEs).

associated with bonding prevent MBE/WBE firms from growing and that bonding is nearly impossible to obtain for small firms.

Insurance. Business insurance is required to work on most ODOT construction and engineering-related contracts. Information from the study team's in-depth personal interviews indicated that minority- and women-owned firms may face barriers in the Oklahoma insurance market.

- A number of interviewees discussing insurance reported that obtaining insurance was a barrier for MBE/WBE firms. For example, the African American male and female owners of a DBE-certified construction firm stated that they have had personal experience with insurance requirements and obtaining insurance being a barrier and believe that discrimination contributes to the barrier. They stated that when it was time for the firm to renew its general liability policy, they went into an agency in El Reno and the company refused to even quote a policy.

- In BBC's telephone interviews with Oklahoma businesses, firm owners and managers were asked if insurance requirements on projects had presented a barrier to bidding. Minority-owned firms were nearly twice as likely as majority-owned firms to report that insurance requirements were a barrier. WBEs were slightly more likely than majority-owned firms to report that insurance requirements were a barrier.

C. Why are there disparities for ODOT engineering contracts?

Disparity results for ODOT engineering contracts presented in Section VI of the report indicated substantial disparities in the utilization of WBEs and each MBE group. BBC explored the following questions:

1. Are there different results for prime contracts and subcontracts?

2. Are there different results for small prime contracts?

3. Does ODOT award contracts to "the same large firms"?

4. How does ODOT notify firms of engineering and other professional services bidding opportunities?

5. Is there anything in the consultant selection process that might work against MBE/WBEs?

1. Are there different results for prime contracts and subcontracts? BBC examined MBE/WBE utilization and availability as prime consultants and subconsultants on ODOT engineering-related contracts.

Utilization. As shown in Figure VII-8, MBE/WBEs obtained about 7 percent of engineering-related subcontract dollars and about 4 percent of ODOT engineering-related prime contract dollars.

Figure VII-8.
MBE/WBE and DBE share of FHWA-and state-funded prime contract and subcontract dollars on ODOT engineering-related contracts, July 2004–June 2009

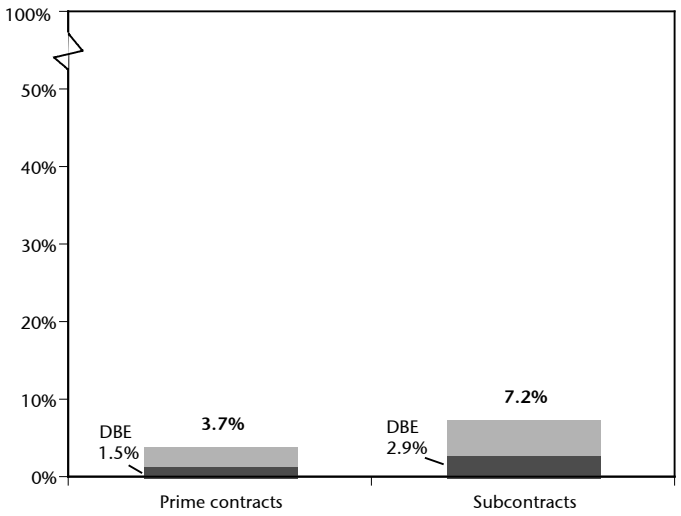
Note:

Number of contracts/subcontracts analyzed is 386 for prime contracts and 312 for subcontracts.

For more detail and results by group see Figures K-17 and K-26 in Appendix K.

Source:

BBC Research & Consulting from ODOT contract data.



Disparity analysis. BBC identified disparities between MBE/WBE utilization and availability for engineering subcontracts and prime contracts. Figure VII-9 summarizes disparity results for MBE/WBEs overall. Figures K-17 and K-26 present disparity results for individual groups.

Figure VII-9.
Disparity indices for MBE/WBE utilization as prime consultants and subconsultants on FHWA-and state-funded engineering-related contracts, July 2004–June 2009

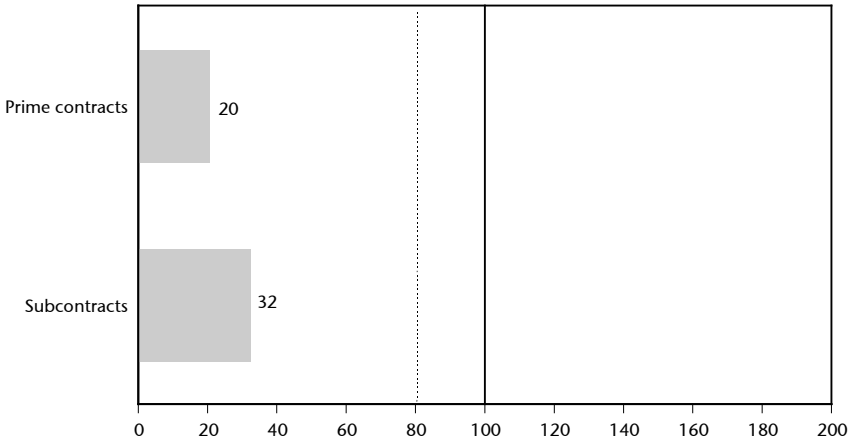
Note:

Number of contracts/subcontracts analyzed is 386 for prime contracts and 312 for subcontracts.

For more detail and results by group see Figures K-17 and K-26 in Appendix K.

Source:

BBC Research & Consulting.



BBC identified substantial disparities in the utilization of MBE/WBEs as prime consultants and subconsultants on both FHWA- and state-funded engineering-related contracts. During the study period, ODOT did not set goals on any engineering-related contracts. Figures K-27 and K-28 in Appendix K provide these results.

Subcontracting as a percentage of engineering contract dollars. Subcontract data collected by BBC indicated that subcontract dollars accounted for 14 percent of engineering-related contract dollars (MBE/WBE and non-MBE/WBE subcontractors) during the study period.

2. Are there different results for small prime contracts? The study team examined whether the size of ODOT engineering contracts may be a barrier for MBE/WBEs. During the study period, about one-third of engineering contract dollars were accounted for by contracts of $500,000 and less.

As shown in Figure VII-10, utilization of MBE/WBEs as prime consultants on small contracts (9%) was higher than for all engineering-related contracts (4%).

Figure VII-10.
MBE/WBE and DBE share of FHWA- and state-funded engineering prime contract dollars by contract size, July 2004—June 2009

Note:

Number of all contracts analyzed is 386 for all contracts and 297 for contracts of $500,000 and less.

For more detail and results by group see Figures K-17 and K-53 in Appendix K.

Source:

BBC Research & Consulting from SDCRAA contracting data.

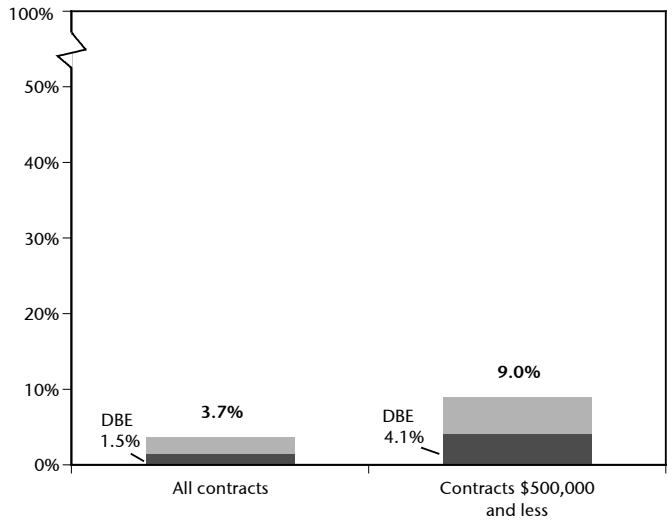


Figure VII-11 shows overall MBE/WBE disparity indices for all engineering-related contracts and for contracts of $500,000 or less. The disparity index of 41 indicates a substantial disparity for MBE/WBEs on ODOT's small engineering contracts. Figure K-53 presents detailed results for individual MBE/WBE groups.

Figure VII-11.
Disparity indices for MBE/WBE utilization as prime consultants on small and all FHWA-and state-funded engineering-related contracts, July 2004–June 2009

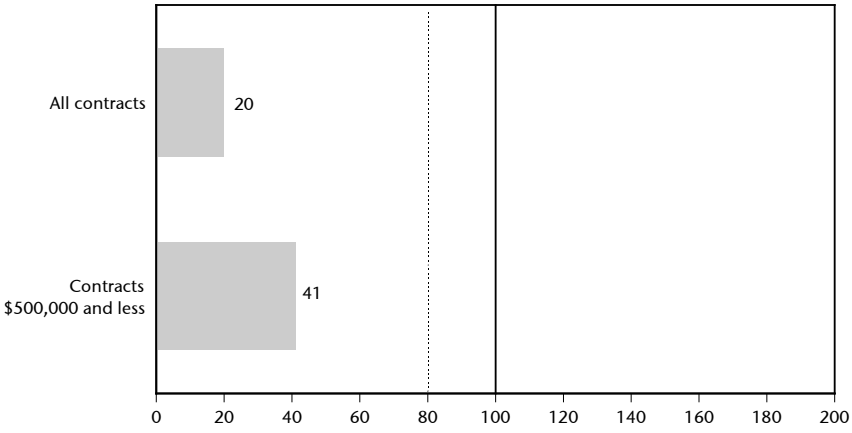
Note:

Number of all contracts analyzed is 386 for all contracts and 297 for contracts of $500,000 and less.

For more detail and results by group see Figures K-17 and K-53 in Appendix K.

Source:

BBC Research & Consulting.



3. Does ODOT award contracts to "the same large firms"? BBC researched whether just a few firms participate in ODOT engineering-related contracts.

Participation as subconsultants. Overall, about 40 percent of the subconsultant dollars on ODOT engineering-related contracts went to just four firms (Terracon Consultants, Bridgefarmer & Associates, Professional Service Industries and White Engineer Associates). None of these firms was minority- or woman-owned.

Two firms — Aerial Data Services Inc. and Infrastructure Engineers, Inc. — accounted for more than 50 percent of total MBE/WBE participation as subconsultants on ODOT engineering-related contracts.

A very small portion of engineering-related dollars went to DBE subconsultants. Four firms accounted for about one-half of the engineering related dollars that went to DBE subconsultants.

Participation as prime consultants. Overall, about one-half of ODOT engineering-related prime contract dollars went to just five majority-owned firms (Cobb Engineering, Engineering Services and Testing, Tetra Tech, Atkins Benham and Poe & Associates).

Four firms represent more than 60 percent of all dollars of engineering-related prime contracts going to MBE/WBEs (Guy Engineering Services, Perez Engineering, Aerial Data Services and Able Consulting). Each of these firms was white women- or Hispanic American-owned.

4. How does ODOT notify firms of engineering and other professional services bidding opportunities? ODOT posts solicitations for engineering work on its website and e-mails notifications to firms in its database of firms who have done work with ODOT or are interested in ODOT engineering contracts. The study team's discussions with engineering-related firms indicated some difficulty in being notified of engineering opportunities with ODOT (see Appendix I).

- An interviewee representing an African American male owner of a DBE-certified safety and environmental consulting firm stated that a solicitation came out in March containing eight projects, two of which were environmental projects his firm could perform. He stated that he did not receive any notification. He stated that he only found out about the work opportunity because another small environmental firm that he had teamed up with in the past e-mailed him the package to inquire if he was interested in working on the project. He stated that he immediately contacted ODOT to find out why he did not receive the solicitation notification. The interviewee reported that ODOT responded that there was some mix up in the process but assured him he was on the list and would receive future notifications.

- Another interviewee representing a female-owned non-certified civil engineering and land surveying firm, commented, "It's so hard to get into the preferred lists ... the short lists ... despite the fact that you have a reputation."

5. Is there anything in the consultant selection process that might work against MBE/WBEs? A number of MBE/WBE engineering and other professional services firms indicated disadvantages when competing for ODOT work as a prime consultant.

- For example, the operations coordinator for a trade association providing economic business development assistance reported that "there is some frustration among the professionals that do engineering and architectural work as far as getting work. I think part of it is that most of them either have just established or have small entities, and it appears ... that ODOT really likes to go with more-established entities in doing that kind of work."

- The Native American female president of an engineering firm stated, "We can't prove unfair denial [of contracts awards]. They just say we didn't meet their criteria; we didn't have repeat business; we didn't have a long-history relationship with ODOT. Well if we don't get one [contract] to at least show our performance and that we can fulfill the contract goals and can do a project from start to finish, there is no way to ever get into this cycle. We can't get in because we can't even get on this merry-go-round."

Short-listing and selection process. ODOT typically begins the consultant selection process for an engineering-related contract by requesting that consultants submit letters of interest and response packets, which are evaluated by a panel within ODOT.[3] The ODOT panel typically evaluates consultants based on the following criteria:

- **Local office.** One of the key evaluation factors is whether the firm has an office or branch in Oklahoma.

- **Experience.** Evaluators measure the experience and/or familiarity of the proposed consultant team with ODOT procedures.

- **Ability.** The ability of the firm to do the work is considered, including specialized qualifications.

- **Capacity.** Capacity of the consultant team to accomplish the work in accordance with the anticipated schedule considering current workloads is considered.

- **Past performance.** Past performance of the consultant on prior ODOT projects is also an evaluation factor.

From the list of consultants that submitted letters of interest, the ODOT panel selects a "short list" of consultants to be asked to an interview. ODOT typically includes a minimum of the three highest-ranking consultants in the interviews.

Consultants for engineering are selected based on the combined score of their letter of interest and presentation of the technical proposal during an interview. Price is negotiated after the consultant is selected.

[3] The ODOT evaluation panel is a minimum of three representatives with knowledge and expertise in the critical aspects of the project.

Analysis of the success of MBE/WBEs participating in the ODOT consultant selection process. BBC analyzed MBE and WBE success when competing for engineering-related contracts. For 53 engineering-related projects, the study team collected information that each proposing firm submitted. Of the 681 submissions, 45 (7%) were submitted by MBEs and 22 (3%) were submitted by WBEs.

There were disparities in the likelihood that ODOT would short-list a firm based on its submission. The top portion of Figure VII-12 shows that:

- Only one of the submissions from MBEs (2% of the MBE submissions) resulted in short-listing;
- About 22 percent of the submissions from WBEs resulted in the firm being short-listed; and
- More than 40 percent of majority-owned firms' submissions resulted in short-listing.

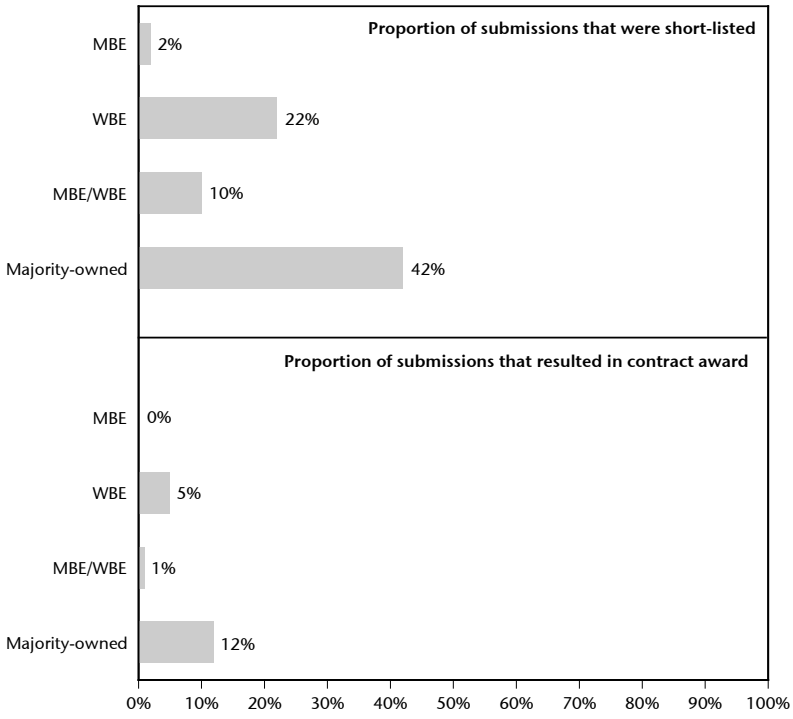
As shown in the lower portion of Figure VII-12, BBC also calculated the percentage of submissions that resulted in contract awards:

- None of the 45 submissions from MBEs resulted in a contract award (0% success).
- One submission from a WBE resulted in an award, a success rate of 5 percent.
- All but one of the sampled contract awards went to majority-owned firms (72 awards from 614 submissions for a success rate of 12 %).

Figure VII-12. Proportion of submissions on ODOT engineering-related contracts that were short-listed and that resulted in contract awards, July 2004–June 2009

Note:
Based on random sample of 53 contracts (681 proposals or other submissions). There were multiple awards for 10 contracts.

Source:
BBC Research & Consulting from ODOT contract records.



For the 350 proposal submissions received on a sample of 18 engineering-related projects, BBC compared the proposal evaluation scores received by majority-owned firms with those received by MBEs and WBEs. Engineering-related proposals are initially evaluated across six categories, with each category receiving a score from 1 to 10. Typically, a team of three evaluators reviewed each proposal submission. As listed in the scoring sheets, the evaluation categories are:

- Location of the firm's office where the work will be completed. Preference will be afforded to Oklahoma domiciled firms (8 points for out of state and 10 points for in state firms).
- Experience of the proposed Consultant Team with Department procedures.
- Ability of the Consultant Team to perform the type of work contemplated.
- Specialized qualifications of the Consultant Team applicable to the type of work contemplated.
- Capacity of the Consultant Team to accomplish the work in accordance with the anticipated schedule considering current workloads.
- Past performance of the Consultant Team.

For the submittals examined, the average scores given to the group of MBE proposals and the group of WBE proposals were lower than scores assigned to majority-owned firms in four of the six evaluation categories:

- Experience,
- Ability to perform the work,
- Specialized qualification applicable to the work; and
- Past performance.

These differences in average scores were statistically significant at the 95 percent confidence level. The only evaluation category in which MBEs and WBEs outscored majority-owned firms was in capacity to accomplish the work (statistically significant difference only for MBEs).

Summary

Section VI identified disparities in the participation of African American-, Asian-Pacific American- and Hispanic American-owned firms in ODOT construction contracts, especially on state-funded contracts where no DBE contract goals are applied. Even on construction contracts with DBE contract goals, large disparities were present for African American- and Asian-Pacific American-owned firms.

These disparities persist in the additional analyses presented in Section VII. Disparities exist across regions of the state, for subcontracts, and for small as well as all prime contracts. There is evidence that certain groups of MBEs do not have the same opportunities as other firms in obtaining ODOT construction prime contracts and subcontracts. ODOT prequalification, bonding and insurance requirements may negatively affect prime construction contract opportunities for these groups based on the quantitative and qualitative information examined.

For each group of MBEs and for white women-owned firms, Section VI identified disparities between utilization and availability for ODOT engineering-related contracts. Section VII presents quantitative and qualitative evidence that MBE/WBEs do not have the same outcomes as majority-owned firms when seeking ODOT engineering-related prime contracts. There are also disparities in the use of MBE/WBEs as subconsultants on ODOT engineering-related contracts.