

Beyond Legal Mandates: Using Disparity Study Results to Improve DBE Programs



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Breakout Session D

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Learning objectives

- Basics on information produced in a disparity study
- How DBE Program staff can use results
- How others can use results
- Case studies based on Keen disparity studies

Examples from Keen disparity studies for state DOTs

- Arizona
- California
- Georgia
- Idaho
- Indiana
- Minnesota
- Montana
- Nevada
- New Mexico
- Oklahoma
- Oregon
- Ohio (Title VI)

Examples of use of study results

Examples of successes:

- Use availability survey for bidders list
- Use availability data for contract goal-setting
- Answer questions raised by interested stakeholders (e.g., state legislature)
- Create new programs for state-funded contracts
- Identify areas of federally-funded contracts at the state DOT where need to implement DBE Program
- Design new technical assistance programs and delivery methods

Example when results not used:

- Recommended changes to state contractors licensing board (Keen recommended three times, in three different decades, but none of the recommendations not acted upon)

Case study: 2016 Oregon DOT Disparity Study

- Helped to set overall DBE goal (11.6%) and make neutral projections (5.0%) under Federal DBE Program
- Based in part on study results, ODOT included all DBE groups as eligible to meet DBE contract goals
- But what else?



Keen Independent recommended initiatives to ensure that ODOT's contracting and assistance is:

1. Open
2. Simple
3. Fair
4. Transparent
5. Impactful
6. Monitored and improving

ODOT Recommendation #1 Openness

Example:

- a. Telephone survey and in-depth interview identified learning about opportunities is a barrier, especially for Small Contracting Program
 - More training and better dissemination of information about opportunities
 - Consider an electronic newsletter
 - Provide real-time, web-based training and assistance on how to learn about, win and perform work

ODOT Recommendation #2: Simplicity

Example:

- b. Increase number of certified DBEs through targeted outreach and certification assistance
 - More than 1/3 of dollars going to minority- and women-owned firms on FHWA-funded contracts went to non-DBEs
 - Among the 50 minority- and women-owned firms that received at least \$1 million in ODOT contract dollars, 20 were not currently DBE certified
- Use disparity study availability list to reach out to potential DBEs
- Retain consultants to assist with applications (ODOT not a certifying agency in Oregon)
- Bundle DBE certification assistance with ESB and 8(a) certification

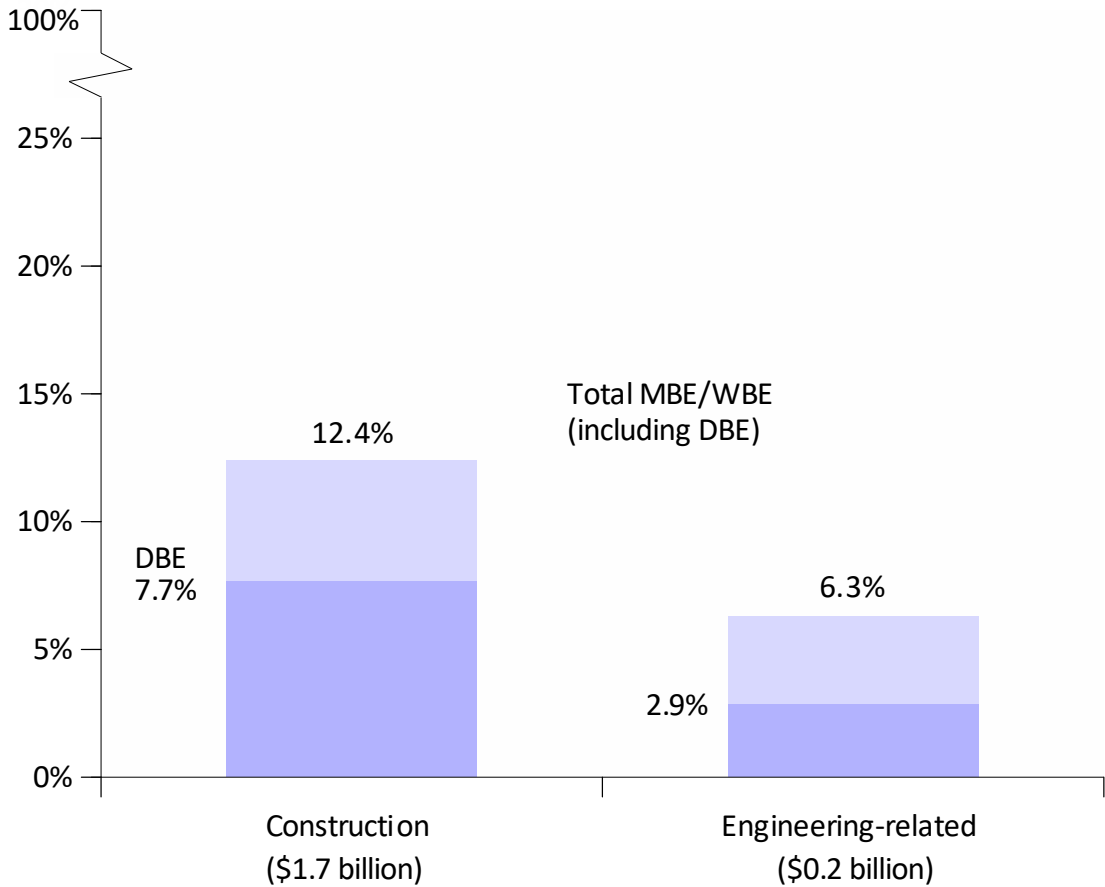
ODOT Recommendation #3: Fairness

Example:

- a. Review how firm qualifications are assessed in construction and A&E contract awards

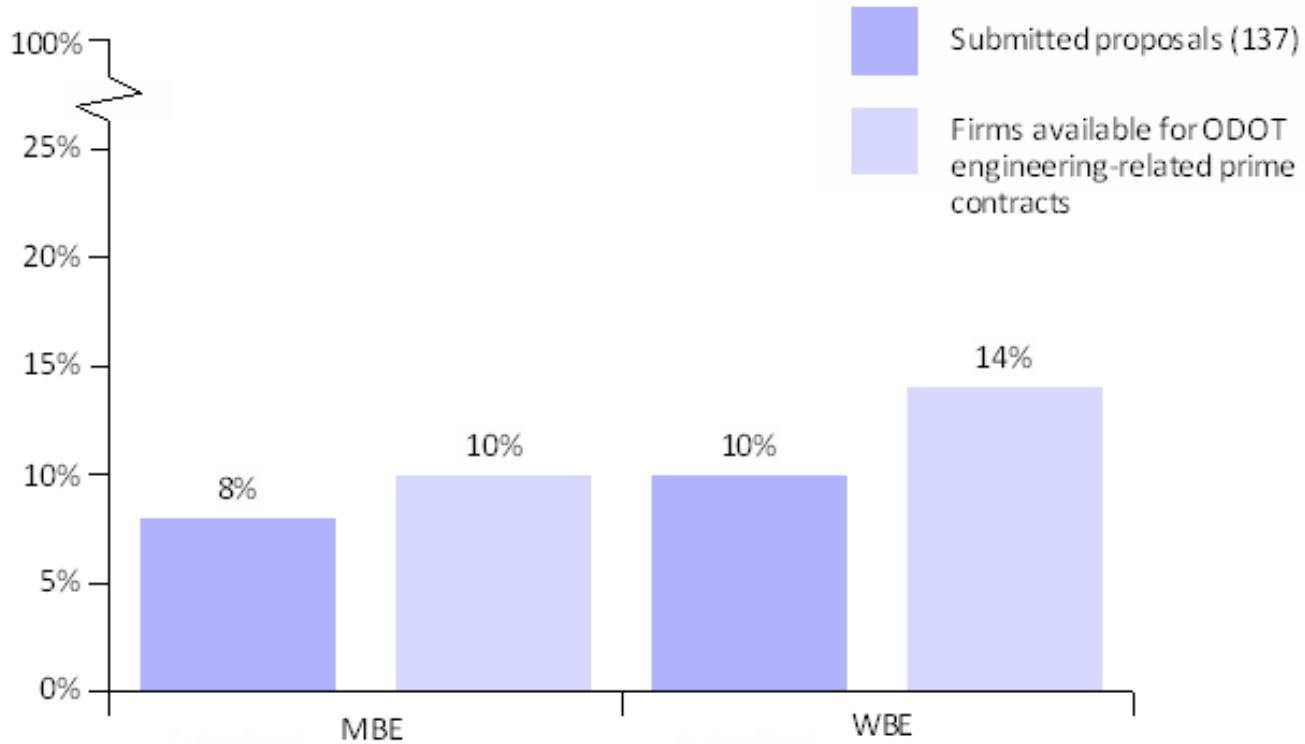
(Fairness) MBE/WBE and DBE utilization for ODOT construction and engineering contracts

Lower participation for engineering-related contracts



(Fairness) Outcomes when MBE/WBEs compete for ODOT engineering contracts (based on sample of 50 contracts)

Somewhat lower share of total proposals from MBE/WBEs relative to MBE/WBE availability



(Fairness) Odds of winning an engineering proposal

- Analyzed number of awards for MBEs and WBEs compared with majority-owned firms
- No material difference in win rates for MBEs and for WBEs compared with majority-owned firms
- Even so, recommended that ODOT examine certain evaluation factors, including “capacity” of engineering firms, that could have a negative effect on MBE/WBEs and other small businesses

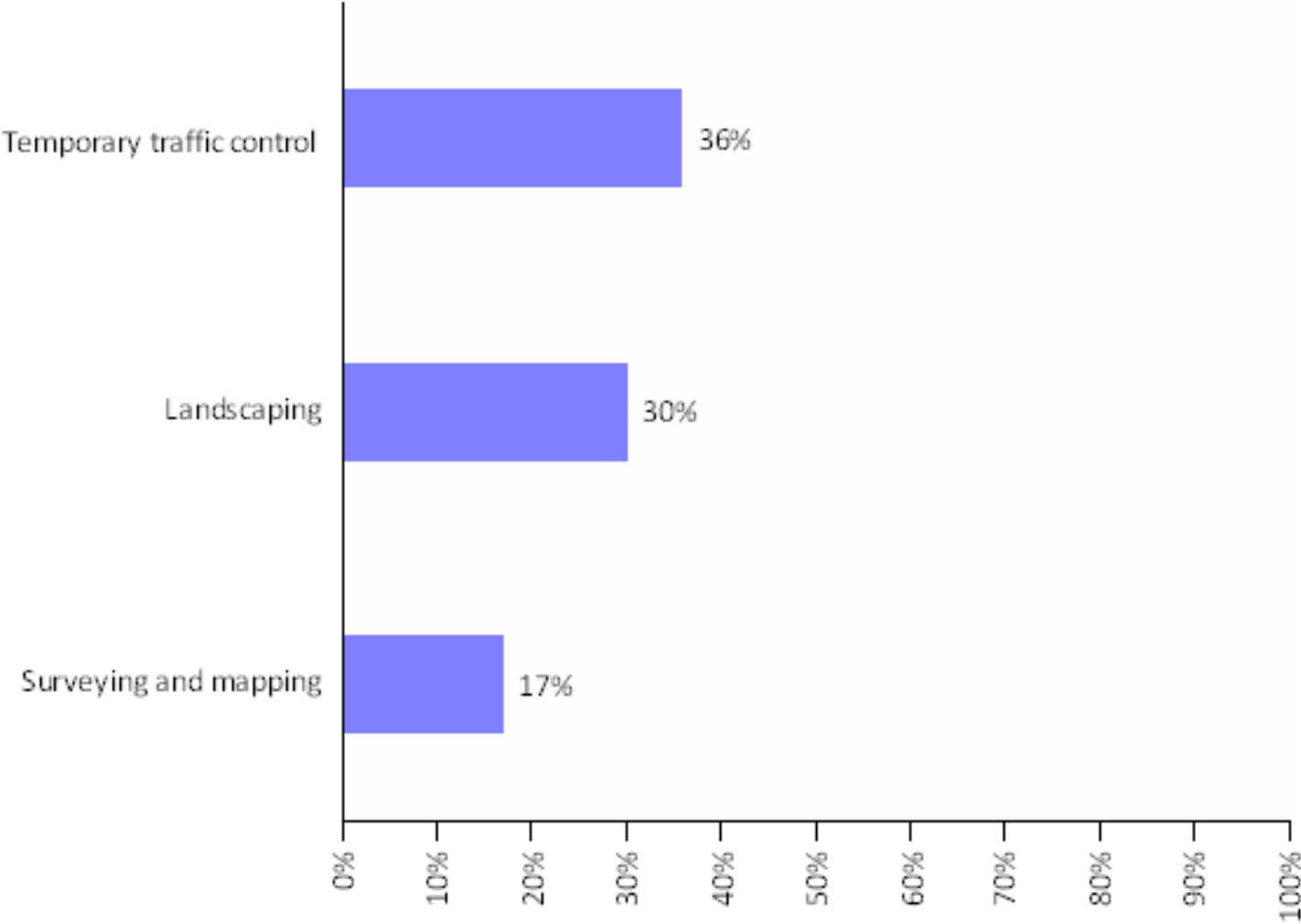
Recommendation #4: Transparency

- a. Expand awareness of construction contract award information and payments
 - Post when ODOT has paid the prime
- b. Provide comprehensive information about consultant contract awards, including subcontractors

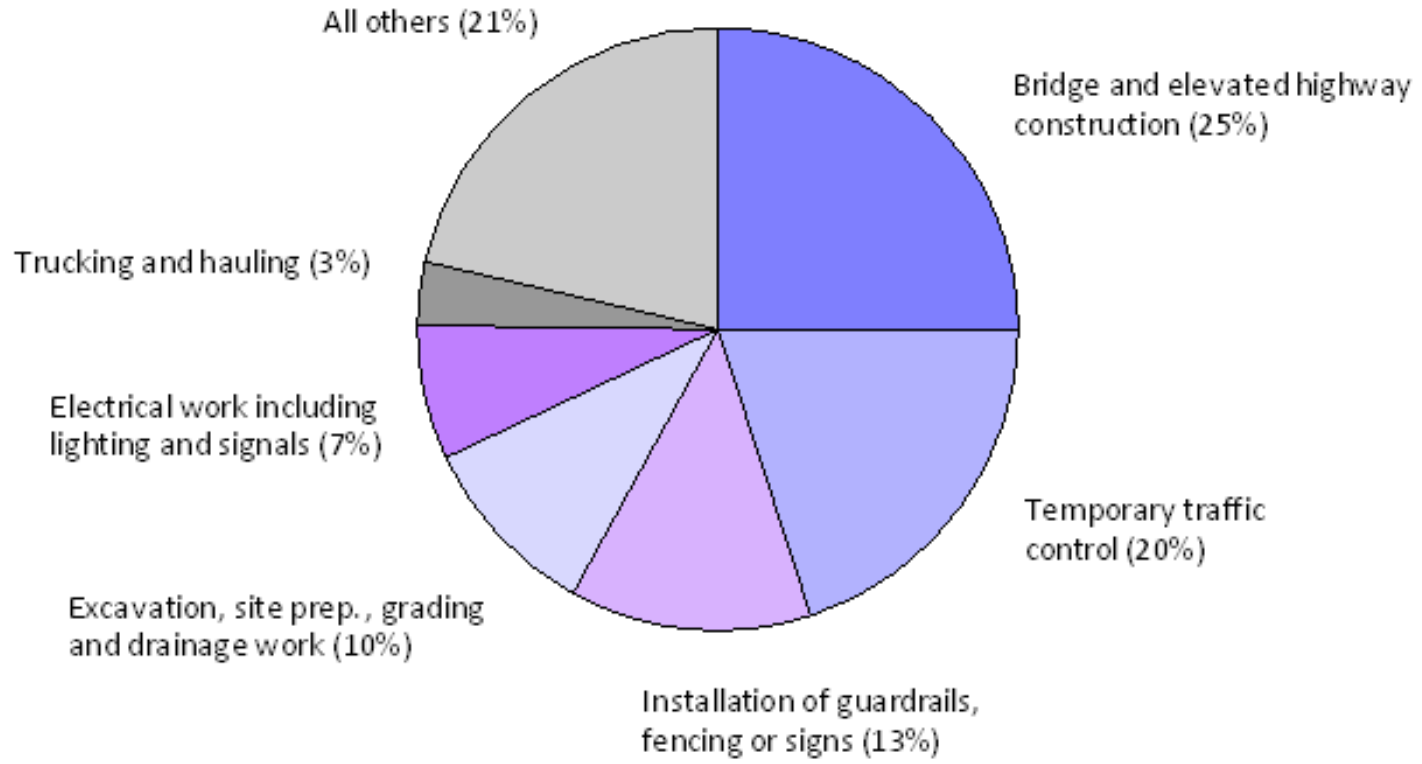
Recommendation #5: Impact

- a. Continue partnerships to provide general business assistance
- b. Build stronger DBEs and other small businesses within core transportation contracting disciplines
- c. Consider an ESB contract goals program for state-funded contracts
- d. Pursue changes in state law to allow expansion of Small Contracting Program and ESB/SBE Programs
- e. Consider including each DBE group as eligible for DBE contract goals program

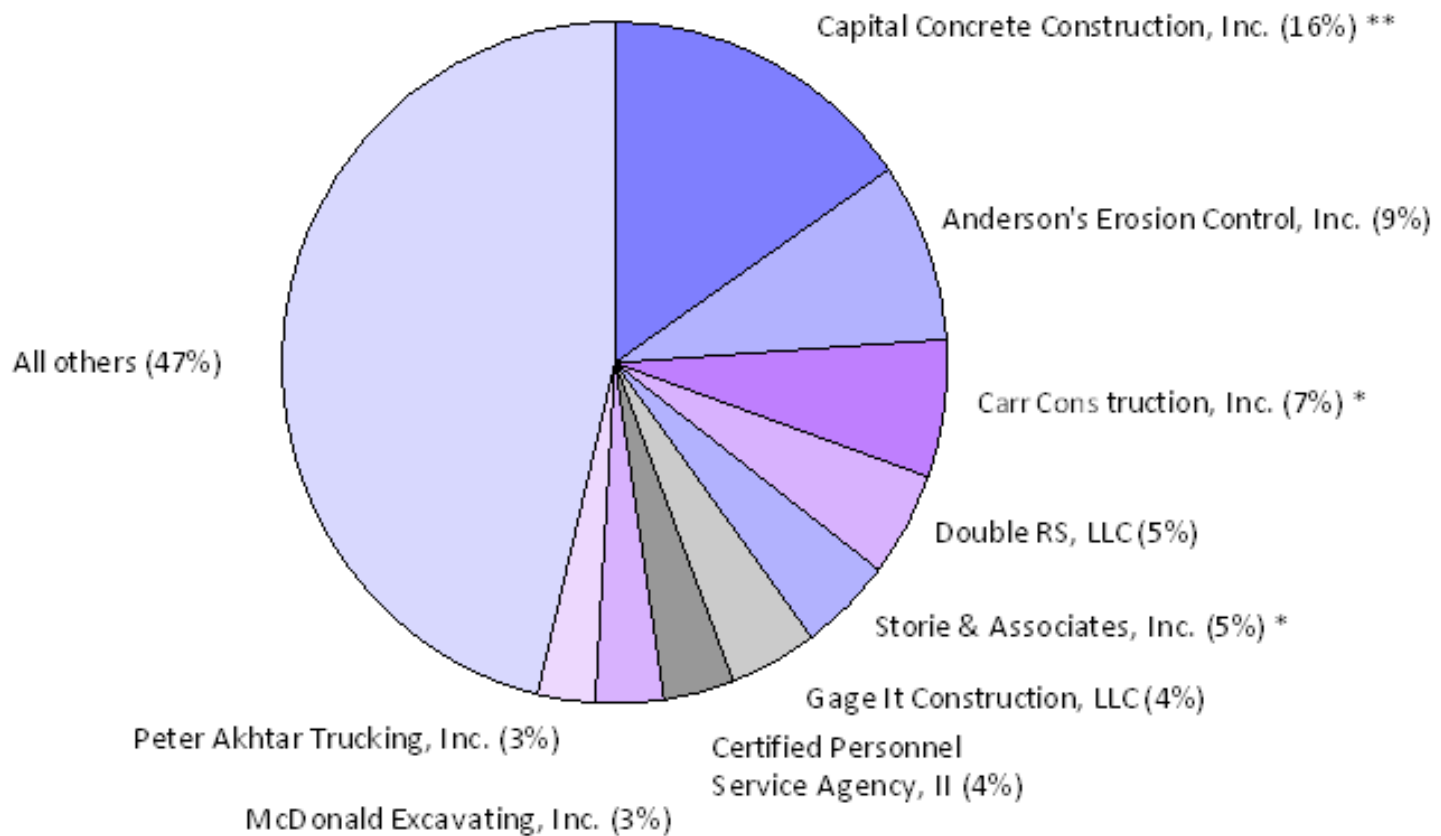
(Impact) DBE share of total ODOT contract dollars



(Impact) Distribution of DBE contract dollars



(Impact) Firms accounting for the most DBE contract dollars



*No longer DBE certified starting in 2014
** Disconnected phone and surrendered contractor's license at time of the study

Recommendation #6: Monitored and improving

Example:

- a. Expand data collection and reporting, including a comprehensive business contact list
- Track participation of non-certified MBE/WBEs in addition to DBEs if need to examine reasons behind any “shortfall”

Overall DBE goal based on current and potential DBEs

But only report utilization of current DBEs

Difference between DBE participation and overall DBE goal could be participation of potential DBEs that are not certified



ODOT response to results and recommendations (spring 2016)

- Make its contracting opportunities more accessible to women- and minority-owned businesses, including a review of
 - Business processes
 - Insurance and bonding requirements
- Ensure prompt payment to subcontractors
- Increase the value of small business certification and help businesses get certified
- Leverage new and continue to build existing strategic stakeholder partnerships and programs to provide effective
 - Outreach
 - Training
 - Access to financial business resources