

**OREGON DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION
TO FHWA FOR FEDERAL FISCAL YEARS 2023 THROUGH 2025
MAY 2022**

Introduction

The Oregon Department of Transportation (ODOT) hereby submits its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2023 through 2025 to the Federal Highway Administration (FHWA) pursuant to [49 CFR Part 26, section 26.45](#).

Based on the results of a Disparity Study conducted in 2022 by Keen Independent Research (also provided to FHWA), ODOT proposes a 23.43 percent DBE goal for FFYs 2023 through 2025 for FHWA-funded contracts; 17.33 percentage points of which is projected to be accomplished through race- and gender-conscious means (DBE contract goals). ODOT projects that the remaining 6.10 percentage points will be accomplished through race-neutral means (ODOT outreach, training and program efforts).

Step 1. Determining a Base Figure — Pursuant to 49 CFR Section 26.45(c)

ODOT began the process of determining its overall DBE goal by establishing a base figure. Consistent with USDOT regulations and guidance, ODOT established the base figure from a DBE availability analysis conducted by Keen Independent Research (Keen Independent) as part of the 2022 Disparity Study. Keen Independent also prepared the ODOT 2016 Disparity Study and 2019 Disparity Study Update. ODOT based its FFY2017–FFY2019 and FFY2020–FFY2022 overall DBE goals for FHWA-funded contracts on these studies.

The availability analysis determined the percentage of ODOT FHWA-funded contract dollars that might go to current and potential DBEs (defined on page 2) given the availability of firms for the types, sizes and locations of FHWA-funded prime contracts and subcontracts. Keen Independent performed this analysis by identifying firms available for each contract and subcontract, calculating the share of those firms that were DBEs, and then dollar-weighting the availability results for each contract to determine overall weighted availability of DBEs.

This availability analysis was performed for FHWA-funded contracts and subcontracts awarded from October 2017 through September 2020. These were the three most recent completed federal fiscal years at the initiation of the 2022 Disparity Study. There were 597 ODOT- and local agency-awarded contracts and 2,969 associated subcontracts that were FHWA-funded during this time period. Contract dollars totaled about \$1.3 billion.^{1,2}

The types, sizes and locations of FHWA-funded contracts and subcontracts from October 2017 through September 2020 are similar to the work ODOT anticipates for FHWA-funded contracts for FFY2023 through FFY2025. Therefore, an availability analysis for those three fiscal years of FHWA-funded contracts provides a reasonable projection of the percentage of FHWA-funded contract dollars that might go to available DBEs for FFY2023 through FFY2025.

As presented on page 69 of the 2022 Disparity Study Summary Report, one might expect current and potential DBEs to receive 23.46 percent of ODOT FHWA-funded transportation contract dollars based on analysis of

¹ Excluding large projects such as the Columbia River Bridge project, which will have a separate DBE goal and not be included in calculations presented here.

² As funds from the Infrastructure Investment and Jobs Act still need to be allocated, there is no projection for these funds.

FHWA-funded contracts from October 2017 through September 2020 and current availability of firms to perform that work.

ODOT considered possible options for a database of available firms (DBEs and non-DBEs) to use when examining availability for individual prime contracts and subcontracts from October 2017 through September 2020.

- Based on analysis of FHWA-funded contracts for October 2017 through September 2020, Keen Independent determined that Oregon, along with two counties in Washington (Clark and Skamania) should be selected as the relevant geographic market area for the availability study.

About 85 percent of ODOT and local agency FHWA-funded contract dollars from October 2017 through September 2020 went to firms with locations in Oregon or those two Washington counties.

Therefore, the availability analysis examined firms with locations in Oregon or Clark or Skamania counties in Washington. (The geographic market area for the availability analysis is identical to the 2016 and 2019 studies.)

Keen Independent also examined the types of work involved in FHWA-funded contracts from October 2017 through September 2020. There were 33 types of work that accounted for about 97 percent of FHWA-funded contract dollars. The availability analysis focuses on firms performing these 33 types of work.

DBE Availability. As briefly set out below and explained in detail in the Summary Report and Appendix D of the 2022 Disparity Study, Keen Independent compiled a master availability database and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an availability figure of 23.46 percent for ODOT's FHWA-funded transportation contracts.

Availability is expressed as the percentage of the associated contracting dollars that one might expect DBEs to receive based on various factors including the type of work involved, the location of the work and the size of the contract or subcontract. In the base figure analysis, firms considered as DBEs were those businesses that were DBE-certified or were minority- and woman-owned firms that appeared that they could be DBE-certified based on revenue criteria described in federal regulations including 49 CFR Section 26.65.

Master Availability Database. Keen Independent developed a master availability database (current and potential DBEs and non-DBEs) by contacting thousands of firms to collect information about availability for ODOT contracts. The firms contacted for the database came from the following sources:

- Companies that had previously identified themselves to ODOT as interested in learning about future work by being prequalified for certain types of work or by being on bidding lists; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related subindustries in Oregon (D&B's Hoover's business establishment database). D&B's Hoover's database is accepted as the most comprehensive and complete source of business listings in the nation.

Keen Independent completed surveys with 4,834 Oregon businesses. After consolidating duplicate responses and removing companies that were (a) no longer in business, (b) not-for-profit, (c) not qualified and interested or other otherwise unable to perform ODOT or local agency work, (d) not located in Oregon or the two Washington counties, or (e) uninterested in discussing availability for ODOT work, the final database contains 724 businesses, of which 211 (about 29%) were minority- or women-owned (MBE or WBE). (See Figure 1 on the following page.) Figure 1 also compares these results with those from the 2016 Disparity Study and 2019 Disparity Study Update.

1. Number of businesses included in the availability database, 2021

Race/ethnicity and gender	2022 Study		2019 Study	2016 Study
	Number of firms	Percent of firms	Percent of firms	Percent of firms
African American-owned	32	4.42 %	1.67 %	2.32 %
Asian-Pacific American-owned	13	1.80	1.93	1.65
Subcontinent Asian American-owned	5	0.69	0.88	0.92
Hispanic American-owned	29	4.01	3.78	3.48
Native American-owned	19	2.62	2.37	2.14
Total MBE	98	13.54 %	10.63 %	10.49 %
WBE (white woman-owned)	113	15.61	16.87	16.72
Total MBE/WBE	211	29.14 %	27.50 %	27.21 %
Majority-owned firms	513	70.86	72.50	72.79
Total	724	100.00 %	100.00 %	100.00 %

Note: Percentages may not add to totals due to rounding.

Source: Keen Independent Research 2022 Disparity Study Report (Summary Report — Availability section, page 23).

Head Count DBE Availability. The 29 percent figure represents a simple “head count” of MBE and WBE firms and is only the initial stage of calculating the DBE availability base figure. The availability calculation is further refined by dollar-weighting and by not counting as a potential DBE those MBE or WBE firms that appear to be ineligible to become DBE-certified.

Dollar-Weighted Availability. The “head count” data were further analyzed to produce “dollar-weighted” availability estimates, which represent the percentage of ODOT transportation contracting dollars that DBEs might be expected to receive based on their availability for specific types, sizes and locations of ODOT FHWA-funded prime contracts and subcontracts. This approach to calculating availability was a bottom-up, contract-by-contract process of “matching” available firms to specific prime contracts and subcontracts based on the types, sizes and locations of work they do. In other words, Keen Independent performed an availability analysis for each of the 3,566 FHWA-funded prime contracts and subcontracts during the study period, and then summarized results.

This approach to availability is much more precise than a simple “head count” of businesses because it considers the following factors:

1. **Type of Work.** USDOT suggests calculating availability based on businesses’ abilities to perform specific types of work and gives the following example in Part II F of “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”:

For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.³

³ USDOT. *Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program as updated December 22, 2014* <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

The type of work was taken into account by examining 33 different subindustries related to transportation as part of estimating availability for ODOT and local agency work.⁴

2. Qualifications and Interest in Transportation-Related Prime Contract and Subcontract Work. Information was collected on whether businesses are qualified and interested in working as prime contractors, subcontractors, or both on ODOT and/or local agency work, in addition to the consideration of several other factors related to prime contracts and subcontracts (e.g., contract types, sizes and locations):
 - Only businesses that reported being qualified for and interested in working as prime contractors were counted as available for prime contracts (additional firms were counted as available for prime contract work because contract data for ODOT or local agencies indicated that they had prime contracts in the previous five years).
 - Only businesses that reported being qualified for and interested in working as subcontractors were counted as available for subcontracts (additional firms were counted as available for subcontract work because contract data for ODOT or local agencies indicated that they had subcontracts in the previous five years).
 - Businesses that reported being qualified for and interested in working as both prime contractors and subcontractors (or performed both prime contractor and subcontractor work for ODOT or local agencies in the previous five years) were counted as available for both prime contracts and subcontracts.
3. Size of Prime Contracts and Subcontracts. Also considered was the size, in terms of dollar value, of the prime contracts and subcontracts that a business bid on or received in the five years prior to the survey (i.e., “bid capacity”) when determining whether to count that business as available for a specific prime contract or subcontract. Bid capacity considered any contracts or subcontracts that the firm had bid or provided quotes, including in the private sector.

This approach is consistent with many recent court decisions that have found relative capacity measures to be important to measuring availability (e.g., *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*;⁵ *Western States Paving Company v. Washington State DOT*;⁶ *Rothe Development Corp. v. U.S. Department of Defense*;⁷ and *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*⁸).

4. Geographic Location of the Work. This was determined by using the location where work was performed for ODOT and local agency contracts (Portland/Hood River, Northwest, Southwest, Central and Eastern). Only firms reporting that they were able to work in a region were counted as available for contracts in that region.

⁴ The subindustries considered included: engineering; general road construction and widening; asphalt, concrete or other paving; bridge and elevated highway construction; temporary traffic control; concrete flatwork (including sidewalk, curb and gutter); electrical work including lighting and signals; asphalt, concrete or other paving materials; installation of guardrails, fencing or signs; transportation planning; concrete repair; excavation, site prep, grading and drainage; pavement surface treatment (such as sealing); painting for road or bridge projects; structural steel work; striping or pavement marking; surveying and mapping; landscaping and related work, including erosion control; drilling and foundations; environmental consulting; construction management; inspection and testing; communications and outreach; trucking and hauling; construction remediation and clean-up; wrecking and demolition; custom computer programming services; pavement milling; steel; fence or guardrail materials; other concrete work; other heavy and civil engineering construction and aggregate materials supply.

⁵ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187, 2013 WL 1607239 (9th Cir. April 16, 2013).

⁶ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

⁷ *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

⁸ *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996).

5. Dollar-Weighted Results. Relative availability was determined on a contract-by-contract basis and then dollar-weighted to determine overall DBE availability for FHWA-funded contracts. For each prime contract and subcontract, Keen Independent calculated (a) the number of DBEs available for that type, size and location of work, (b) the total number of firms available for that work, and (c) the percentage DBE availability for that prime contract or subcontract, calculated by dividing (a) by (b). The factor used to dollar-weight the availability results for each of the 3,566 prime contracts and subcontracts was calculated by dividing the dollars for that prime contract/subcontract by \$1.3 billion (the total FHWA-funded contract dollars examined). Small prime contracts or subcontracts received small weights and the largest contracts received the highest weights. For example, availability results for a \$13 million prime contract would receive a weight of 1% ($\$13,000,000 \div \$1,300,000,000 = 1.0\%$). Thus, the results of relatively large contract elements contributed more to overall availability estimates than those of relatively small contract elements. Once weighted, the DBE availability percentage results for each prime contract and subcontract were added to develop the overall availability figure. This approach is consistent with USDOT's "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program," which suggests a dollar-weighted approach to calculating availability.

Figure 2 below provides an example of the contract-by-contract dollar-weighted availability calculation. Availability calculations were first done for minority- and women-owned firms and then refined to show results for current and potential DBEs.

2. Example of an availability calculation for an ODOT subcontract

One of the subcontracts examined was for temporary traffic control site (\$12,689) on a 2020 contract in Northwest Oregon. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- a. Were in business in 2020;
- b. Indicated that they performed temporary traffic control work;
- c. Reported ability to perform work in Northwest Oregon;
- d. Indicated qualifications and interest in such subcontracts; and
- e. Reported bidding on work of similar or greater size in the past five years in Oregon.

There were 45 businesses in the availability database that met those criteria. Of those businesses, 11 were MBE/WBEs. Therefore, MBE/WBE availability for the subcontract was 24 percent (i.e., $11/45 = 24.4\%$).

The contract weight was $\$12,689 \div \$1.3 \text{ billion} = 0.001\%$ (equal to its share of total procurement dollars). Keen Independent made this calculation for each prime contract and subcontract.

Source: Keen Independent Research 2022 Disparity Study Report (Summary Report — Availability section, page 23).

Summing the Dollar-Weighted Availability. Keen Independent performed the calculations shown in Figure 2 for 3,566 FHWA-funded prime contracts and subcontracts for the study period. When Keen Independent summed the results for all contracts, overall dollar-weighted MBE/WBE availability for FHWA-funded contracts was 23.46%.

Keen Independent used the approach described above to estimate the availability of current and potential DBEs for FHWA-funded prime contracts and subcontracts that ODOT and local agencies awarded during the study period.

Figure 3 below presents overall dollar-weighted availability by MBE/WBE group for ODOT FHWA-funded contracts. Keen Independent’s availability analysis for ODOT and local agency FHWA-funded contracts indicates that MBE/WBEs might be expected to receive about 23 percent of these contract dollars, somewhat less than the “headcount” availability in Figure 1. Dollar-weighted availability was highest for African American-owned (9.31%) and white woman-owned companies (9.38%).

3. Dollar-weighted MBE/WBE availability for ODOT FHWA -funded contracts, FFY2018–FFY2020

Race/ethnicity and gender	FHWA
African American-owned	9.31 %
Asian-Pacific American-owned	0.66
Subcontinent Asian American-owned	0.20
Hispanic American-owned	1.86
Native American-owned	2.06
Total MBE	14.08 %
WBE (white woman-owned)	9.38
Total MBE/WBE	23.46 %
Majority-owned firms	76.54
Total	100.00 %

Note: Percentages may not add to totals due to rounding.

Source: Keen Independent Research 2022 Disparity Study Report (Summary Report — Availability section, page 25).

Potential and Certified DBE Availability Adjustments. To determine the DBE base figure, which focuses on availability of currently certified DBEs and firms that could be certified as DBEs, Keen Independent refined the 23.46 percent dollar-weighted availability figure by not counting any MBE or WBE firms as potential DBEs that appear to be ineligible for certification. The following groups of MBE/WBEs did not count as potential DBEs when calculating the base figure:

- Firms that, in recent years, graduated from the DBE Program or had applied for DBE certification in Oregon and had been denied (based on information supplied by ODOT and information from the USDOT Decertified, Denials and DBE Appeals Decisions website);
- Businesses in the availability interviews reported having average annual revenue over three years that exceeded the revenue limits for DBE certification for their subindustry; and
- Firms in the availability survey database that were ineligible for work based on their inclusion on the Oregon Bureau of Labor and Industries (BOLI) List of Contractors Ineligible to Receive Public Works Contracts (as of March 2022).⁹

⁹ No firms from the availability survey were on the BOLI list.

After subtracting the availability of these three categories of MBE/WBEs, the dollar-weighted availability for current and potential DBEs is 23.43 percent, or 0.04 percentage points lower than total MBE/WBE availability. This information is shown in Figure 4. (Note that the base figure would be 11.41 percent if only currently certified firms were counted as DBEs.)

4. Overall dollar-weighted availability estimates for DBEs for ODOT FHWA-Funded contracts, October 2017–September 2020

Calculation of base figure from past contracts	Availability
Total MBE/WBE	23.46 %
Less firms that graduated from the DBE program or denied DBE certification in recent years or exceed revenue threshold	0.04
Subtotal	23.43 %
Plus white male-owned firms	-
Current and potential DBEs	23.43 %
Current DBEs only	11.41 %

Note: Percentages may not add to totals due to rounding.

Source: Keen Independent Research 2022 Disparity Study Report
(Summary Report — Overall DBE Goal and Projections of Neutral Participation, page 69).

Base Figure. The base figure representing potential and certified DBEs available for ODOT’s FHWA-funded contracts is 23.43 percent. Figure 5 below compares overall dollar-weighted availability estimates for those contracts (right-hand column) with the same analysis for FHWA-funded contracts in the 2016 Disparity Study and 2019 Availability Study.

5. Comparison of overall dollar-weighted availability estimates for DBEs for ODOT FHWA-Funded contracts

	2016 Disparity Study	2019 Availability Study	2022 Disparity Study
FHWA	15.84 %	15.37 %	23.43 %

Source: Keen Independent Research 2016 ODOT Disparity Study;
Keen Independent Research 2019 ODOT Disparity Study Update;
Keen Independent Research 2022 Disparity Study Report
(Summary Report — Overall DBE Goal and Projections of Neutral Participation, page 69).

Step 2. Consideration of Possible Adjustments — 49 CFR Section 26.45(d)

In accordance with DBE Program regulations, after the base figure was calculated, ODOT considered available evidence to determine whether or not the figure should be adjusted higher or lower than the base figure (a “step 2 adjustment”). The regulations indicate that an agency must consider the following:

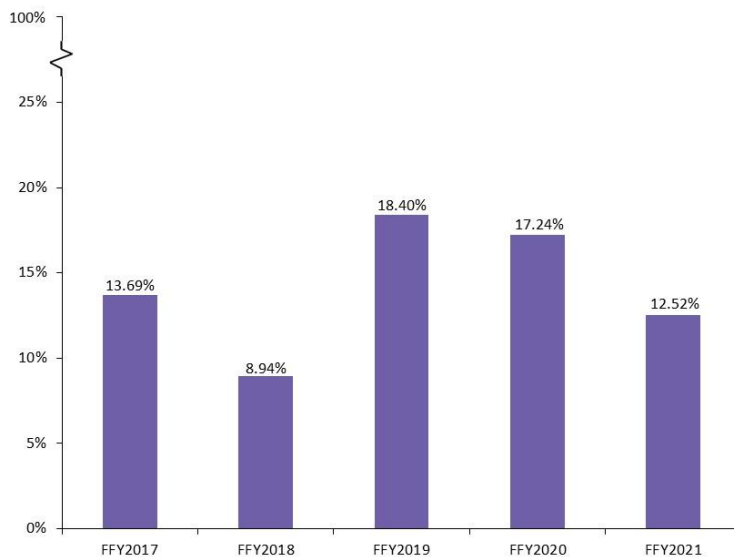
1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.¹⁰

Considering relevant information from the 2022 Disparity Study Report and Appendices, ODOT reviewed each of the factors listed above in determining whether or not to adjust the base figure.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs have Performed in Recent Years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

DBE Participation Based on ODOT Uniform Reports to FHWA. Based on payments data from ODOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA, the median DBE participation from FFY2017 through FFY2021 was 13.69 percent. This value suggests a possible downward step 2 adjustment based on this factor. These results are presented in Figure 6.

6. DBE Participation on FHWA-Funded Contracts Based on ODOT Uniform Reports to FHWA, Fiscal Years 2017 through 2021



Source: ODOT Uniform Reports of DBE Award or Commitments and Payments.

¹⁰ 49 CFR Section 26.45.

DBE Participation Based on Keen Independent Utilization Analysis for FHWA-Funded Contracts. Based on Keen Independent analysis of DBEs on contracts during the study period, the DBE participation from FFY2018 through FFY2020 was 15.0 percent, similar to the 13.69 percent calculated from the Uniform Reports.

2. Information Related to Employment, Self-Employment, Education, Training and Unions. The 2022 Disparity Study reviews information about conditions in the Oregon transportation contracting industry for minorities, women and MBE/WBEs. The Summary Report reviews overall results, supported by detailed quantitative analyses of marketplace conditions in Oregon found in Appendices E through H. Keen Independent’s analyses indicate barriers that certain minority groups and women face related to entry and advancement and business ownership in the Oregon construction, professional services and goods industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ODOT and local agency transportation contracts.

It may not be possible to quantify the cumulative effect that barriers in employment, education and training may have had in depressing the availability of minority- and women-owned firms in the Oregon transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained below.

In the 2022 Disparity Study, the study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Oregon construction, professional services, goods and other services industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the report provides detailed results of the business ownership regression analyses).¹¹

- Those analyses revealed that African Americans, Hispanic Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various gender-neutral personal characteristics. Each of these disparities was statistically significant.
- In addition, there was a statistically significant disparity in firm ownership for Subcontinent Asian Americans in the Oregon professional services industry.
- Asian Americans found to be less likely to own businesses in the goods industry than non-minorities.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if African Americans, Asian Americans, Hispanic Americans, and white women owned businesses at the same rate as similarly situated non-minorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

As the explanation of these calculations are somewhat complex, ODOT provides Figure 7 to document how the upward adjustment was determined. A detailed explanation of each portion of the calculation follows the figure.

Figure 7 calculates the impact on overall MBE/WBE availability, resulting in a possible upward adjustment of the base figure to 34.39 percent. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded transportation prime contracts and subcontracts that ODOT and local agencies awarded from October 2017 through September 2020). Calculations are explained below.

¹¹ The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

7. Potential step 2 adjustment to ODOT’s overall DBE goal for FHWA-funded contracts considering disparities in the rates of business ownership

Current and potential DBEs	a. Weighted DBE Availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of overall DBE availability**
Construction					
African American	12.86 %	37	34.76 %	27.31 %	
Hispanic American	2.27	66	3.44	2.70	
Other minorities	2.90	n/a	2.90	2.28	
White women	7.78	65	11.97	9.41	
Minorities and women	25.81 %	n/a	53.07 %	41.70 %	28.98 %
All other businesses	74.19	n/a	74.19	58.30	
Total firms	100.00 %	n/a	127.26 %	100.00 %	
Professional services					
Subcontinent Asian American	0.84 %	28	3.00 %	3.01 %	
Other minorities	4.67	n/a	4.67	4.69	
White women	11.65	129	9.03	9.07	
Minorities and women	17.16 %	n/a	16.70 %	16.78 %	3.97 %
All other businesses	82.84	n/a	82.84	83.22	
Total firms	100.00 %	n/a	99.54 %	100.00 %	
Goods					
Asian American	0.00 %	0	--	--	
Other minorities	1.34	n/a	1.34 %	1.34 %	
White women	19.76	n/a	19.76	19.76	
Minorities and women	21.10 %	n/a	21.10 %	21.10 %	1.00 %
All other businesses	78.90	n/a	78.90	78.90	
Total firms	100.00 %	n/a	100.00 %	100.00 %	
Other services					
Minorities	9.00 %	n/a	9.00 %	9.00 %	
White women	11.98	n/a	11.98	11.98	
Minorities and women	20.98 %	n/a	20.98 %	20.98 %	0.43 %
All other businesses	79.02	n/a	79.02	79.02	
Total firms	100.00 %	n/a	100.00 %	100.00 %	
Total for DBEs	23.43 %	n/a	n/a		34.39 %
Difference from base figure					10.96 %

Note: Numbers may not add to 100.00% due to rounding.
 * Initial adjustment is calculated as current availability divided by the disparity index for business ownership.
 ** Components of the goal were calculated as the value after adjustment and scaling to 100%, multiplied by the percentage of total FHWA funded contract dollars in each industry (construction = 69.5%, professional services = 23.7%, goods = 4.8%, other services = 2.1%).

Source: Keen Independent Research 2022 Disparity Study (Chapter 9, page 5).

The study team completed these “but for” analyses separately for construction and engineering contracts and then weighted the results based on the proportion of FHWA-funded contract dollars that ODOT awarded for each industry for October 2017 through September 2020 (i.e., a 69.5% weight for construction, a 23.7% weight for professional services, a 4.8% weight for goods and a 2.1% weight for other services). The rows and columns of Figure 7 present the following information from Keen Independent’s “but for” analyses.

1. Current Availability. Column (a) presents the current availability of DBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for minority- and women-owned DBEs. The current combined availability of DBEs for ODOT FHWA-funded transportation contracts for October 2017 through September 2020 is 23.43 percent, as shown in the bottom row of column (a).
2. Disparity Indices for Business Ownership. As presented in Appendix F of the 2022 Disparity Study report, African Americans, Hispanic Americans and white women were less likely to own construction firms than similarly situated non-minorities and white men. This difference was statistically significant for each of those groups.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 7 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), Hispanic Americans own construction businesses at 66 percent of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F of the 2022 Disparity Study report explains how the study team calculated the disparity indices.

3. Availability after Initial Adjustment. Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
4. Availability after Scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100% for each industry. The study team re-scaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for Hispanic Americans shown for construction was calculated in the following way: $(3.44\% \div 127.26\%) \times 100 = 2.70\%$.
5. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 7 shows the component of the total base figure attributed to the adjusted MBE and WBE availability for construction versus other industries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and for engineering/other subindustries — and multiplying it by the proportion of total FHWA-funded contract dollars in each industry (i.e., 69.5% for construction, 23.7% for professional services, 4.8% for goods and 2.1% for other services). For example, the study team used the 41.70 percent shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 69.5 percent for a result of 28.98 percent. A similar weighting of MBE/WBE availability for professional services produced a value of 3.97 percent.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 34.39 percent as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the “but for” MBE/WBE availability (34.39%) and the current availability (23.43%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 10.96 percentage points (34.39% - 23.43% = 10.96%).

3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate transportation-related businesses in the Oregon marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ODOT and local agency transportation-related prime contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Summary Report — Qualitative Information about marketplace conditions section and Appendix J of the 2022 Disparity Study.

There was also evidence in the 2022 Disparity Study that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms. Additionally, MBEs and WBEs were somewhat more likely to report that insurance requirements on contracts were a barrier to bidding.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ODOT’s overall annual goal for DBE participation in FHWA-funded contracts.

4. Other Factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.¹²

Among the “other factors” ODOT examined was the information in the 2022 Disparity Study about the comparative success of MBE/WBEs and majority-owned businesses in the Oregon marketplace. There was quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. There was also qualitative evidence of barriers to the success of minority- and women-owned businesses. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affected minority- and women-owned firms in the Oregon transportation contracting industry.

There is no straightforward way to project the number of MBE/WBEs available for ODOT work but for the effects of these other factors.

¹² 49 CFR Section 26.45.

Summary of Approaches for Making Step 2 Adjustments. Quantification of potential downward or upward step 2 adjustments is summarized below.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs have Performed in Recent Years. Analysis of this factor might indicate a downward step 2 adjustment if ODOT analyzed its estimates of past DBE participation (based on payments) — for recent years, the median DBE participation on FHWA-funded contracts was 13.69 percent (from Figure 6).

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 23.43 percent base figure and 13.69 percent DBE participation is 9.74 percentage points (23.43% - 13.69% = 9.74%). One-half of this difference is a downward adjustment of 4.87 percentage points (9.74% ÷ 2 = 4.87%). The goal would then be calculated as follows: 23.43% – 4.87% = 18.56%. (These calculations are presented in Figure 8.)

2. Information Related to Employment, Self-Employment, Education, Training and Unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 10.96 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If ODOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 34.39 percent (23.43% + 10.96% = 34.39%). Figure 8 summarizes these calculations.

8. Potential Step 2 Adjustments to ODOT’s Overall DBE Goal for FHWA-Funded Contracts, FFY 2023–FFY 2025

Step 2 adjustment component	Value	Explanation
Lower adjustment of overall DBE goal for current capacity		
Base figure	23.43 %	From base figure analysis
Evidence of current capacity	<u>13.69</u>	Past DBE participation
Difference	9.74 %	
	÷ <u>2</u>	Reduce by one-half
Adjustment	4.87 %	Downward adjustment for current capacity
Base figure	23.43 %	From base figure analysis
Adjustment for current capacity	- <u>4.87</u>	Downward step 2 adjustment
Overall DBE goal	18.56 %	Lower range of DBE goal
Upward adjustment of overall DBE goal for business ownership		
Base figure	23.43 %	From base figure analysis
Adjustment for "but for" factors	+ <u>10.96</u>	"But for" step 2 adjustment for business
Overall DBE goal	34.39 %	Upward adjustment of DBE goal for business

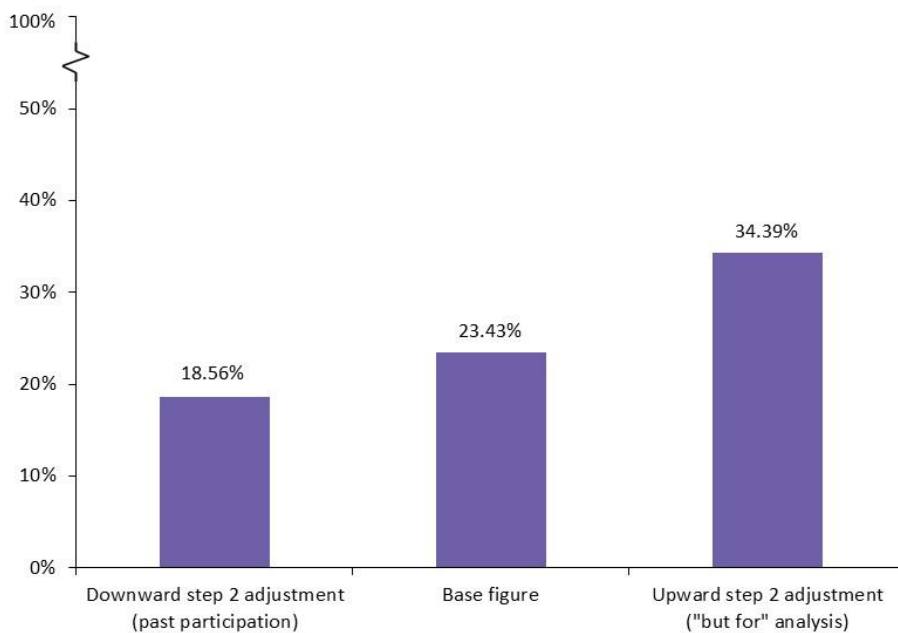
Source: Keen Independent Research 2022 Disparity Study (Summary Report – Overall DBE goal and projections of neutral participation, page 71).

3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified in the 2022 Disparity Study.

4. Other Factors. Impact of the barriers to success of MBE/WBEs in Oregon could not be quantified in the 2022 Disparity Study. However, evidence supports an upward adjustment.

Summary. ODOT considered whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal. If ODOT were to make a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts would be 18.56 percent. If ODOT decided to not make a downward adjustment and to make an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 34.39 percent. Figure 9 summarizes the potential adjustments described in this document.

9. Potential Step 2 adjustments to ODOT’s overall DBE goal for FHWA-funded contracts



Source: Keen Independent Research 2022 Disparity Study (Summary Report – Overall DBE goal and projections of neutral participation, page 71).

Adjustments Summary. For FHWA-funded contracts from FFY 2023 through FFY 2025, ODOT proposes utilizing the base figure, for an overall DBE goal of 23.43 percent. ODOT proposes using the base figure as it reflects the current availability of current and potential DBEs to perform future ODOT and local agency FHWA-funded contracts.

Race-/Gender-Neutral and Race-/Gender-Conscious Split — 49 CFR Section 26.51(c)

To comply with the Federal DBE Program, ODOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.¹³ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. ODOT has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, ODOT has projected the portion of its overall DBE goal that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral, and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.¹⁴
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.¹⁵
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 10.

10. Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]

You must also explain the basis for the State’s race-neutral/race-conscious division and why it is the State’s best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient’s race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient’s market, the race-neutral measures it employs and information on contracting in the recipient’s contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient’s contracts that do not have contract goals; past prime contractors’ achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state’s programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women’s businesses participate in programs without goals.

Source:

FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year].

¹³ 49 CFR Section 26.51.

¹⁴ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

¹⁵ 49 CFR Section 26.51.

Based on 49 CFR Part 26 and the resources above, ODOT considered the following questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency's past experience in meeting its overall DBE goal?
3. What has DBE participation been when ODOT did not use DBE contract goals (or other race- or gender-conscious measures)?¹⁶
4. What is the extent and effectiveness of race- and gender-neutral measures that ODOT currently has in place and will put in place for the next fiscal year?

The balance of this section is organized around each of those general areas of questions.

1. Is There Evidence of Discrimination within the Local Transportation Contracting Marketplace for any Racial, Ethnic or Gender Groups? The 2022 Disparity Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

Marketplace Conditions. As discussed in Summary Report — Quantitative analysis of marketplace conditions and Qualitative analysis of marketplace conditions sections of the 2022 Disparity Study, Keen Independent examined conditions in the Oregon marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes.

Results of the Disparity Analysis for FHWA-Funded Contracts. The 2022 Disparity Study report compares the utilization and availability of minority- and women-owned firms on ODOT's FHWA-funded contracts without DBE goals

Utilization of minority- and woman-owned businesses in FHWA-funded contracts without goals was substantially below what might be expected from the availability analysis. This was true for each DBE group.

When examining state-funded contracts, there was a substantial disparity for MBEs overall and for white woman-owned firms. State-funded contracts also did not have DBE contract goals.

¹⁶ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

Summary. ODOT reviewed the information about marketplace conditions presented in the Summary Report and Appendices E through J of the 2022 Disparity Study, as well as other information it has, when considering the extent to which it can meet its overall DBE goal through neutral measures. The combined information from the marketplace analyses and the disparity analyses indicates evidence of disparate outcomes for each group of businesses included as DBEs in the Federal DBE Program African American-, Asian-Pacific American-, Hispanic American-, Subcontinent Asian American-, Native American- and woman-owned firms.

2. What has been the Agency’s Past Experience in Meeting its Overall DBE Goal? ODOT’s reported certified DBE participation based on DBE commitments/awards on FHWA-funded contracts is summarized in Figure 11, below. As shown, reported DBE participation based on DBE commitments/awards on FHWA-funded contracts was higher than the goal for three of the five fiscal years from FFY 2017 through FFY 2021. In the other two fiscal years (FFY 2018 and FFY 2021) ODOT fell short of its DBE goal but was within three percentage points of achieving its goal for both of those years.

11. ODOT overall DBE goal and reported DBE participation on FHWA-funded contracts, FFY 2018 through FFY 2020

Federal fiscal year	DBE goal	DBE commitments/ awards	Difference from DBE goal
2017	11.60 %	13.69 %	2.09 %
2018	11.60	8.94	-2.66
2019	15.40	18.40	3.00
2020	15.40	17.24	1.84
2021	15.40	12.52	-2.88

Source: ODOT Uniform Reports of DBE Awards/Commitments and Payments.

3. What has DBE Participation been when ODOT has not applied DBE Contract Goals (or other Race- or Gender-Conscious Measures)? Keen Independent examined three sources of information to assess race-neutral DBE participation:

- ODOT-reported race-neutral DBE participation on FHWA-funded contracts for the most recent years;
- Keen Independent estimates of DBE participation on FHWA- and state-funded contracts for which no DBE contract goals applied; and
- Information concerning DBE participation as prime contractors on FHWA-funded contracts.

The following discussion examines these three sets of participation figures.

Race-Neutral DBE Participation in Recent ODOT Uniform Reports. Per USDOT instructions, ODOT counts as “neutral” participation any prime contracts, as well as subcontracts, going to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

ODOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for the three most recent federal fiscal years indicate median race-neutral participation of 6.10 percent. Figure 12 presents these results.

12. ODOT-Reported Race-Neutral and Race-Conscious DBE Participation on FHWA-Funded Contracts for FFY 2018 through FFY 2020

Federal fiscal year	DBE commitments/award		
	Total	Race-conscious	Race-neutral
2017	13.69 %	7.59 %	6.10 %
2018	8.94	6.08	2.86
2019	18.40	10.02	8.38
2020	17.24	10.42	6.82
2021	12.52	6.79	5.73

Source: ODOT Uniform Reports of DBE Awards/Commitments and Payments.

DBE Participation on Contracts Without DBE Contract Goals. Keen Independent also analyzed DBE participation on ODOT’s FHWA-funded contracts without DBE contract goals. As reported in the 2022 Disparity Study, ODOT achieved 7.6 percent DBE participation on these contracts from October 2017 through September 2020.

DBE Participation as Prime Contractors. Keen Independent also analyzed DBE participation based on FHWA-funded prime contract dollars. From October 2017 through September 2020, the DBE participation on prime contracts was about 1.3 percent for FHWA-funded contracts.

4. What is the Extent and Effectiveness of Race- and Gender-Neutral Measures that ODOT Currently has in Place and Will Put in Place for the Next Fiscal Year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ODOT reviewed the race- and gender-neutral measures that it and other organizations currently have in place, and those it has planned or could consider for future implementation.

ODOT has implemented an extensive set of neutral measures (see, for example, Keen Independent’s analysis of neutral remedies in the 2022 Disparity Study). ODOT will be implementing additional efforts, including working with non-certified firms to be certified as DBEs. At this time, it is uncertain whether these additional neutral measures will substantially increase race-neutral participation of DBEs in ODOT’s FHWA-funded contracts.

Proposed Projection of the Portion of the Overall DBE Goal to be Achieved through Neutral Means.

ODOT considered whether it can achieve 100 percent of its overall DBE goal through neutral means or whether race-conscious programs are still needed. ODOT considered the information in the 2022 Disparity Study, the 2019 Disparity Study Update, the 2016 Disparity Study and other sources when reaching its decision on any use of race- and gender-conscious programs (such as DBE contract goals). If ODOT implements its proposed overall DBE goal for FHWA-funded contracts of 23.43 percent, the evidence presented in this report indicates that ODOT might not meet its DBE goal solely through neutral means.

- There is information indicating disparities in outcomes for minority- and women-owned firms, supported by some qualitative evidence of discrimination within the local transportation contracting marketplace, as presented in the 2022 Disparity Study.
- For the past four federal fiscal years, ODOT’s reported race-neutral participation has been 6.10 percent (FFY 2017); 2.86 percent (FFY 2018); 8.38 percent (FFY 2019); 6.82 percent (FFY 2020) and 5.73 percent (FFY 2021). Each of these figures for race-neutral participation is well below a future overall DBE goal in the range of 23.43 percent.

- ODOT has extensive neutral measures in place, and there are many small business assistance programs offered by other institutions throughout the state. Any additional measures ODOT might be able to immediately institute would probably have only a small impact in comparison with what already exists. It is unlikely that ODOT could increase its neutral participation of DBEs to reach an overall DBE goal of 23.43 percent solely through additional neutral measures.

For the following reasons, ODOT proposes a race-neutral projection of 6.10 percentage points for its overall DBE goal for FFY 2023 through FFY 2025.

- The median race-neutral portion of ODOT’s DBE participation was 6.10 percent based on ODOT’s reports for FFY 2017 through FFY 2021 (presented earlier in this document).
- ODOT neutral initiatives are already considerable and will continue to expand.
- Keen Independent’s analysis of DBE participation on FHWA-funded contracts without contract goals indicated 7.6 percent race-neutral DBE utilization, which is close to the proposed race-neutral projection.

ODOT projected a 4.73 percentage point neutral and 10.64 percentage point race-conscious split when it prepared its overall DBE goal of 15.73 percent for FFY 2018 through FFY 2020 after the 2019 Disparity Study Update. The first column Figure 13 presents these recent projections.

The second column of numbers in Figure 13 presents projections using an overall DBE goal of 23.43 percent and a 6.10 percentage point race-neutral projection for FFY 2023 through FFY 2025. The race-conscious portion of the goal is 17.33 percentage points.

13. ODOT Overall DBE Goal and Projections of Race-Neutral Participation for FHWA-Funded Contracts for FFY 2023 through FFY 2025

Component of overall DBE goal	FFY2020–FFY2022	FFY2023–FFY2025
Overall goal	15.37 %	23.43 %
Neutral projection	- <u>4.73</u>	- <u>6.10</u>
Race-conscious projection	10.64 %	17.33 %

Source: Keen Independent Research 2022 Disparity Study (Summary Report — Overall DBE goal and projections of neutral participation, page 76).

Public Participation — 49 CFR Section 26.45(g)

As it did with the 2016 Disparity Study and the 2019 Disparity Study Update, ODOT will publish its DBE Goal and Methodology and the draft 2022 Disparity Study report for public comment on the ODOT's official website before submitting final versions of these documents to FHWA. The public comment period for the draft report and proposed overall DBE goal for FHWA-funded contracts will remain open through June 19, 2022.

ODOT will also hold six virtual Town Halls representing the five ODOT regions as well as a statewide meeting. ODOT has also solicited comments from industry associations, local public agencies, DBE and non-DBE contractors and consultants, and others concerning the Disparity Study and ODOT's proposed DBE goal.

- State/Agency-wide: Monday, May 23, 2022, from 2:00 to 3:30 pm;
- Region 1: Tuesday, May 24, 2022, from 3:00 to 4:30 pm;
- Region 2: Wednesday, May 25, 2022, from 3:00 to 4:30 pm;
- Region 3: Thursday, May 26, 2022, from 10:00 to 11:30 am;
- Region 4: Tuesday, June 7, 2022, from 1:00 to 2:30 pm; and
- Region 5: Friday, June 10, 2022, from 10:30 am to noon.

The public will be encouraged to comment on the size of the proposed overall DBE goal, the methodology used to develop the goal, the results of the 2022 Disparity Study, as well as suggestions on how to improve contracting opportunities for DBEs and other small businesses, including what ODOT and the industry could do to enhance support of the Federal DBE Program.

Information about the webinars is available at <https://www.keenindependent.com/odotdisparitystudy2022/>. In addition, the public was able to submit feedback and provide written comments through the following means:

- (a) During the Virtual Town Halls;
- (b) Online at the above web address;
- (c) By calling the 2022 Disparity Study telephone hotline at 503-765-6663;
- (d) Via email at ODOTDisparityStudy2022@keenindependent.com; and
- (e) By regular mail sent to Keen Independent Research LLC, 701 N. 1st St., 2nd Floor, Phoenix, AZ 85004.