

OREGON DEPARTMENT OF AVIATION Oregon Statewide DBE Disparity Study Executive Summary



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EXECUTIVE SUMMARY.

2021 Oregon Statewide Airport DBE Disparity Study Keen Independent Research LLC

The federal government requires state and local governments to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they receive a certain level of Federal Airport Administration (FAA) funds for airport projects. The Oregon Department of Aviation (ODA) has operated the Federal DBE Program since it became an independent agency in 2000. Every three years, ODA and other NPIAS airports¹ must set an overall annual goal for participation of DBEs in those FAA-funded contracts.

The 2021 Oregon Statewide Airport DBE Disparity Study provides information about minority- and women-owned firms and DBEs to help ODA and other airports set overall DBE goals and operate the Federal DBE Program.² ODA engaged Keen Independent Research (Keen Independent) to complete this study.

Keen Independent has led similar disparity studies for public entities across the country, including for the Oregon Department of Transportation. These research projects are called “disparity studies” because they determine if there is a disparity between the utilization and availability of minority- and women-owned firms in an agency’s contracts.

Disparity Study Research

The Disparity Study began in fall 2019.

- Throughout the study, Keen Independent consulted with ODA Planning and Programs Division staff and external stakeholders that included businesses and trade associations.
- Keen Independent examined ODA and other airport FAA-funded contracts from October 2014 through September 2019. Keen Independent analyzed more than 1,000 prime contracts and subcontracts.
- About 88 percent of ODA and other airports contract dollars went to firms with addresses in Oregon or within Clark and Skamania counties in Washington or Payette County in Idaho. Therefore, Keen Independent focused on this region when collecting data about marketplace conditions for minority- and women-owned firms.
- The study team also collected qualitative information and other input from Oregon businesses, trade associations and other groups.

¹ FAA’s National Plan of Integrated Airport Systems (NPIAS) identifies existing and proposed airports that are included in the national airport system, the roles they currently serve, and the amounts and types of airport development eligible for Federal funding under the Airport Improvement Program (AIP) over the next 5 years.

² The Port of Portland did not participate in this study as it had already completed a disparity study for its contracts.

- The study team completed telephone surveys with 4,889 businesses in Oregon and those Washington and Idaho counties to determine the availability of firms indicating qualifications and interest in airport-related types of work. After considering answers to several screening questions, Keen Independent included 803 companies in the final availability database. These firms provided information such as the race, ethnicity and gender of the business owner and the regions of Oregon where they perform work.
- To determine utilization results, Keen Independent identified the race, ethnicity and gender ownership of companies receiving ODA and other airport prime contracts and subcontracts through sources including telephone interviews with those firms. This analysis produced utilization results for minority-owned firms (by race and ethnicity), white women-owned firms and majority-owned firms (firms that are not minority- or women-owned). ODA reviewed the ownership data before Keen Independent performed the utilization analysis.
- The study team performed disparity analyses by comparing the utilization of minority- and women-owned firms (by race/ethnicity and gender) to the availability benchmarks for each group developed in the study.
- Keen Independent provided instructions for how ODA and other airports can apply the above data to establish future overall DBE goals for FAA-funded contracts and project the portion of those goals to be met through race- and gender-neutral means. ODA and other airports can use this information to update current overall DBE goals and program operation as well.
- For each ODA airport, the study team calculated overall DBE goals for ODA consideration.
- ODA and other airports currently use race- and gender-neutral means to attempt to meet their overall goals for DBE participation. Most participating airports with a current overall DBE goal of more than 0 percent have not met their overall DBE goals in recent years. Keen Independent recommended options for ODA and other airports to consider to better meet their overall goals, including a DBE contract goals program.

Federal Regulations Governing Overall DBE goals

Keen Independent followed federal regulations in Title 49 Code of Federal Regulations (CFR) Part 26 and USDOT Guidance when instructing ODA and other airports how to (a) set overall DBE goals for FAA-funded contracts, (b) project how much of a goal will be met through race-neutral means, and (c) project the portion of the goal (if any) to be met through DBE contract goals.

The 2005 Ninth Circuit Court of Appeals decision in *Western States Paving Co. v. Washington State DOT* is also important for this study. The Court upheld the constitutionality of the Federal DBE Program, but it found that the Washington State DOT failed to show its implementation of the Federal DBE Program to be narrowly tailored (see Chapter 2 and Appendix B of the full report). The disparity study provides information for ODA and other airports to consider in order to meet these legal requirements.

Summary of Study Results

The full report explains availability, utilization and disparity results in detail, along with information about conditions in the Oregon marketplace. Key results are summarized below.

Availability of minority- and women-owned firms and other businesses for ODA and other airport contracts. Figure ES-1 provides the race, ethnicity and gender ownership of the 803 firms in the availability database for this study. Minority-owned firms (MBEs) comprise about 10 percent of businesses in Oregon available for airport contracts. White women-owned firms (WBEs) account for about 14 percent of the companies available for ODA’s and other airports’ work.

Figure ES-1.
Number of businesses
in the availability database

Note:
Numbers rounded to nearest tenth
of 1 percent.
Percentages may not add to totals due to
rounding.

Source:
Keen Independent Research availability
analysis.

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	10	1.2 %
Asian-Pacific American-owned	17	2.1
Subcontinent Asian American-owned	2	0.2
Hispanic American-owned	33	4.1
Native American-owned	19	2.4
Total MBE	81	10.1 %
WBE (white women-owned)	110	13.7
Total MBE/WBE	191	23.8 %
Majority-owned firms	612	76.2
Total firms	803	100.0 %

The study team identified the specific characteristics of each of the 1,076 FAA-funded prime contracts and subcontracts from October 2014 through September 2019 that were included in the study and counted the number of minority-, women- and majority-owned businesses available for each of those prime contracts and subcontracts. Type, size and location of that work were considered. Importantly, the results took into account the “bid capacity” that each firm indicated in the availability survey.³

³ Firms were asked to identify the size of the largest contract the firm had won or bid on in recent years. As an example, if a firm had only bid on contracts or subcontracts up to \$1 million, it was not counted as available for a \$5 million ODA and other airports contract.

Once availability for each contract and subcontract was determined, Keen Independent dollar-weighted results based on the dollars for the contract or subcontract to develop availability benchmarks for all contracts combined.

Although MBE/WBEs accounted for about 24 percent of available firms, the availability benchmark for MBE/WBEs on a dollar-weighted basis was about 15 percent of contract dollars after performing the analysis described above (see Figure ES-2).

Figure ES-2.
Overall dollar-weighted availability estimates for MBE/WBEs for FAA-funded contracts for ODA and other airports, October 2014–September 2019

Note:
Numbers rounded to nearest tenth of 1 percent. Percentages may not add to totals due to rounding.
Weighted availability figures do not include one majority-owned firm that went out of business between the availability survey and the time of this writing.

Race/ethnicity and gender	Dollar-weighted availability
African American-owned	0.19 %
Asian-Pacific American-owned	1.95
Subcontinent Asian American-owned	0.11
Hispanic American-owned	2.70
Native American-owned	<u>1.04</u>
Total MBE	6.00 %
WBE (white women-owned)	<u>9.29</u>
Total MBE/WBE	15.28 %

Source:
Keen Independent Research availability analysis.

Keen Independent used detailed availability results by region to demonstrate how an individual airport can develop its overall DBE goal. The study team calculated overall DBE goals for each ODA airport, as described later in this Executive Summary.

Utilization of minority- and women-owned firms and DBEs. The top portion of Figure ES-3 on the following page presents utilization of minority-owned firms (by group) and white women-owned firms on FAA-funded contracts. MBE/WBEs received 2.8 percent of the contract dollars. As shown, Asian-Pacific American- and white women-owned firms accounted for much of this utilization.

The bottom portion of Figure ES-3 shows participation of firms certified as DBEs during the study period. In total, firms certified as DBEs obtained 1.7 percent of FAA-funded contract dollars. DBEs owned by Asian-Pacific American-owned accounted for one-half of the DBE utilization on these contracts.

Figure ES-3.

MBE/WBE and DBE share of ODA and other airport prime contracts and subcontracts for FAA-funded contracts, October 2014–September 2019

	Number of contracts*	\$1,000s	Percent of dollars
MBE/WBEs			
African American-owned	3	\$ 194	0.1 %
Asian-Pacific American-owned	3	2,338	0.8
Subcontinent Asian American-owned	7	810	0.3
Hispanic American-owned	11	690	0.2
Native American-owned	8	218	0.1
Total MBE	32	\$ 4,251	1.5 %
WBE (white women-owned)	83	3,695	1.3
Total MBE/WBE	115	\$ 7,945	2.8 %
Total majority-owned	961	279,595	97.2
Total	1,076	\$ 287,541	100.0 %
DBEs			
African American-owned	2	\$ 178	0.1 %
Asian-Pacific American-owned	1	2,306	0.8
Subcontinent Asian American-owned	6	756	0.3
Hispanic American-owned	5	142	0.0
Native American-owned	8	218	0.1
Total MBE	22	\$ 3,599	1.3 %
WBE (white women-owned)	42	1,165	0.4
Total DBE-certified	64	\$ 4,764	1.7 %
Non-DBE	1,012	282,777	98.3
Total	1,076	\$ 287,541	100.0 %

Note: Includes subcontracts.

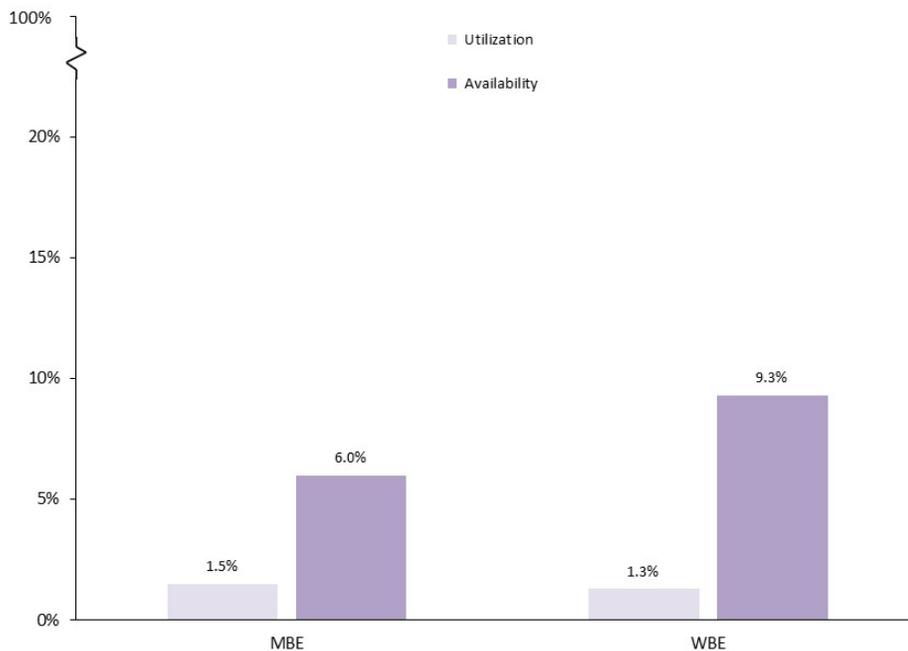
Source: Keen Independent from ODA and other airport contract data.

Disparity analysis results for minority- and women-owned firms on FAA-funded contracts.

Minority-owned firms received 1.5 percent of FAA-funded contracts, a result that was below what might be expected from the availability analysis — 6.0 percent. As presented in Chapter 7 of the report, further analysis by racial and ethnic group identified substantial disparities for African American-, Asian-Pacific American-, Hispanic American-, and Native American-owned firms. There was no disparity for Subcontinent Asian American-owned firms for these contracts.

Figure ES-4 shows that white women-owned firms received 1.3 percent of FAA-funded contract dollars, substantially less than the 9.3 percent that might be expected from the availability analysis.

Figure ES-4.
MBE and WBE utilization and availability for FAA-funded contracts at ODA and other airports, October 2014–September 2019



Note: Number of contracts/subcontracts analyzed is 1,076.

Source: Source: Keen Independent from ODA and other airport contract data.

Quantitative and qualitative information about the local marketplace. Federal courts have found that Congress “spent decades compiling evidence of race discrimination in government highway contracting, barriers to the formation of minority-owned construction businesses, and barriers to entry.”⁴ Congress found that discrimination has impeded the formation and expansion of qualified MBE/WBEs. The evidence examined in this disparity study indicates that the barriers that Congress found on a national level also appear in Oregon. Quantitative and qualitative information about the Oregon marketplace suggests that there is not a level playing for minority- or women-owned firms.

⁴ *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d, 970 (8th Cir. 2003) (citing *Adarand Constructors, Inc.*, 228 F.3d at 1167 – 76); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 992 (9th Cir. 2005).

Entry and advancement. Keen Independent identified barriers for people of color and women entering and advancing in the Oregon construction and architecture and engineering industries, which negatively affected the number of MBE/WBE construction and engineering companies in business today.

Business ownership rates for minorities and women in the transportation contracting industry. The study team identified disparities in business ownership rates for minorities and women that depress the relative number of MBE/WBEs available for construction and engineering work.

Access to capital. Potential barriers associated with access to capital may affect business outcomes for MBE/WBEs. There is evidence that minority- and women-owned firms do not have the same access to capital as majority-owned firms.

Success of businesses in the construction and engineering industries. Minority- and women-owned construction and engineering firms in Oregon had lower revenue than majority-owned firms. This may indicate discrimination and it also demonstrates that any disadvantages for small businesses disproportionately affect MBEs and WBEs.

Some minority and women business owners reported that they were disadvantaged by their size and had difficulty learning about bid or subconsulting opportunities with airports. Some interviewees also reported negative stereotypes and other forms of discrimination against minority- and women-owned firms.

Development of the Overall DBE Goals and Neutral Projections

As described earlier in this Executive Summary, Keen Independent compiled availability data through surveys with businesses in Oregon and surrounding communities. Only businesses reporting their qualifications and interest in public sector prime contracts and subcontracts related to airport work were included in the final analyses. Some of those firms were DBEs.

Base figure analysis using results of dollar-weighted availability. Keen Independent collected information from ODA about future FAA-funded contracts at each of its airports. To calculate availability of DBEs for a prime contract or subcontract, Keen Independent calculated:

- (a) Number of current DBEs available for that type, size and location of work;
- (b) Total number of firms available for that work; and
- (c) Percentage DBE availability for that contract, calculated by dividing (a) by (b).

The study team incorporated information about the subcontracts typically associated with each type of airport project when determining DBE availability at the project level.

Keen Independent then dollar-weighted the percentage DBE availability results for each contract and subcontract to develop overall DBE availability figures by region and type of project.

Step 2 adjustments. Federal regulations require agencies to consider “step 2 adjustments” when determining their overall DBE goals. These adjustments can raise or lower the overall goal from what it would be only considering current availability of DBEs for an agency’s contracts (which is called the “base figure” in the federal regulations).

The Federal DBE Program outlines factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

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.

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure for each ODA airport (see Chapter 9 for details). Figure ES-5 on the following page shows calculation of potential overall goals for ODA airports after downward adjustments (left-hand column of results) and upward adjustments (right-hand column of results). ODA can choose to make either adjustment or no adjustment at all when determining its overall DBE goals for its airports.

Other airports can follow the same process when determining potential step 2 adjustments for their overall DBE goals.

Figure ES-5.

Base figure and potential step 2 adjustments to ODA airports’ overall DBE goals for FAA-funded contracts, FFY 2021–FFY 2023

ODA airport	FFY 2021–FFY 2023		
	Downward adjustment	Base figure	Upward adjustment
Aurora State Airport	5.45 %	10.61 %	15.50 %
Chiloquin State Airport	4.10	8.21	11.99
Condon State Airport-Pauling Field	5.01	10.02	14.64
Cottage Grove State Airport	2.65	5.31	7.75
Independence State Airport	3.18	6.36	9.29
Joseph State Airport	5.88	11.75	17.16
Lebanon State Airport	5.15	10.29	15.03
McDermitt State Airport	4.31	8.61	12.57
Mulino State Airport	3.62	7.25	10.58
Siletz Bay State Airport	7.57	8.75	12.77

Note: Bandon State Airport does not project that it will award any contracts during the FFY 2021 through FFY 2023 goal-setting period and is exempt from setting a DBE goal for that period.

Source: Source: Keen Independent Research.

Projections of the share of the overall goal to be met through neutral means. When ODA prepared its overall DBE goals for each airport for the three years starting FFY 2019, it projected that it would meet those goals entirely through race- and gender-neutral means (see left column of Figure ES-6). In each case, it projected “0%” as the amount of DBE participation it intended to achieve through race- and gender-conscious means. ODA fell short of those goals and study results suggest that ODA may need to use DBE contract goals (a race-conscious measure) to meet its overall DBE goals. (Chapters 7, 8, 10 and 11 discuss these analyses in detail.)

Figure ES-6 on the following page shows Keen Independent’s projections of how much of its overall DBE goals ODA can meet through race- and gender-neutral means and race- and gender-conscious means (using DBE contract goals) in the future. Figure ES-6 provides three columns of goals and projections depending on whether ODA makes a downward or upward adjustment to its overall DBE goals at an airport.

Figure ES-6.

ODA airports' overall DBE goals and race-neutral projections for FAA-funded contracts for FFY 2019 and examples of overall goals and projections for FFY 2021–FFY 2023

ODA airport	FFY 2019	FFY 2021–FFY 2023		
		Downward adjustment	Base figure	Upward adjustment
Aurora State Airport				
Overall goal	6.00 %	5.45 %	10.61 %	15.50 %
Neutral projection	- <u>6.00</u>	- <u>0.29</u>	- <u>0.29</u>	- <u>0.29</u>
Race-conscious projection	0.00 %	5.16 %	10.32 %	15.21 %
Chiloquin State Airport				
Overall goal	0.60 %	4.10 %	8.21 %	11.99 %
Neutral projection	- <u>0.60</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	4.10 %	8.21 %	11.99 %
Condon State Airport-Pauling Field				
Overall goal	0.00 %	5.01 %	10.02 %	14.64 %
Neutral projection	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	5.01 %	10.02 %	14.64 %
Cottage Grove State Airport				
Overall goal	5.50 %	2.65 %	5.31 %	7.75 %
Neutral projection	- <u>5.50</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	2.65 %	5.31 %	7.75 %
Independence State Airport				
Overall goal	3.66 %	3.18 %	6.36 %	9.29 %
Neutral projection	- <u>3.66</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	3.18 %	6.36 %	9.29 %

Figure ES-6 (continued).

ODA airports' overall DBE goals and race-neutral projections for FAA-funded contracts for FFY 2019 and examples of overall goal and projections for FFY 2021 through FFY 2023

ODA airport	FFY 2019	FFY 2021–FFY 2023		
		Downward adjustment	Base figure	Upward adjustment
Joseph State Airport				
Overall goal	- %	5.88 %	11.75 %	17.16 %
Neutral projection	- <u>-</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	- %	5.88 %	11.75 %	17.16 %
Lebanon State Airport				
Overall goal	- %	5.15 %	10.29 %	15.03 %
Neutral projection	- <u>-</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	- %	5.15 %	10.29 %	15.03 %
McDermitt State Airport				
Overall goal	0.00 %	4.31 %	8.61 %	12.57 %
Neutral projection	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	4.31 %	8.61 %	12.57 %
Mulino State Airport				
Overall goal	0.00 %	3.62 %	7.25 %	10.58 %
Neutral projection	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>	- <u>0.00</u>
Race-conscious projection	0.00 %	3.62 %	7.25 %	10.58 %
Siletz Bay State Airport				
Overall goal	4.30 %	7.57 %	8.75 %	12.77 %
Neutral projection	- <u>4.30</u>	- <u>6.39</u>	- <u>6.39</u>	- <u>6.39</u>
Race-conscious projection	0.00 %	1.18 %	2.35 %	6.38 %

Note: Bandon State Airport does not project that it will award any contracts during the FFY 2021 through FFY 2023 goal-setting period and is exempt from setting a DBE goal for that period.

Source: Source: Keen Independent Research.

Recommendations Concerning Program Elements

Keen Independent suggests that ODA and other participating airports consider the following actions.

Recommendations concerning race- and gender-neutral program measures. Regulations in 49 CFR Section 26.51 require agencies operating the Federal DBE Program to meet the maximum feasible portion of their overall DBE goal through race- and gender-neutral means. Such neutral measures include removing barriers to the participation of businesses in general or promoting the participation of small businesses. If an agency can meet its overall DBE goal solely through race- and gender-neutral means, it must not use race- and gender-conscious measures as part of its implementation of the Federal DBE Program.

In their program documents, Oregon airports reported that they had planned to implement race-neutral measures such as arranging solicitations and times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and small business participation; carrying out information and communication programs on contracting procedures and specific contracting opportunities; and ensuring the distribution of DBE directories to the widest feasible universe of potential prime contractors.

ODA and some other airports have employed neutral measures such as participating in networking events like the Governor's Marketplace and other trade shows. It is unclear how many of the other measures have been effectively implemented across Oregon airports, however.

Recommendation that certain ODOT neutral programs be applied to ODA FAA-funded contracts. Because it receives USDOT funds for highway contracts, the Oregon Department of Transportation also operates the Federal DBE Program, including neutral efforts to encourage DBE participation. ODOT neutral activities include:

- A Small Contracting Program;
- A DBE Supportive Services Program that provides outreach and technical assistance;
- Efforts to un-bundle contracts into smaller segments;
- Participation in networking events; and
- A project-specific mentor-protégé program.

Procurements for ODA price agreements and construction contracts are handled by the ODOT Procurement Office unless they are considered to be construction contracts that are not defined as public improvements in the State of Oregon Public Code. There is also some overlap in the disciplines involved in airport contracts and ODOT highway contracts. In addition, ODOT has many years of experience successfully operating race- and gender-neutral elements of the Federal DBE Program for its contracts funded by the Federal Highway Administration (FHWA).

Keen Independent recommends that ODA consider whether any of the current ODOT neutral efforts can apply to ODA's FAA-funded contracts and DBEs involved in airport work. Rather than duplicate efforts, ODA might consult with ODOT to determine if certain of its neutral efforts can also apply to ODA.

Recommendation that ODOT and Port of Portland neutral programs might be applied to FAA-funded contracts at other airports. For the reasons as discussed above, other airports might also consider partnering with ODOT on delivery of neutral programs to DBEs and other small businesses. Airports close to Portland might also coordinate neutral programs with the Port of Portland. For example, airports could ask to attend Port of Portland networking events with prime contractors and potential DBE subcontractors to discuss opportunities at their airports.

Recommendation concerning potential development of a small business contract goals program. ODA and other airports might consider setting contract goals for small businesses (SBEs) on their FAA-funded contracts. DBEs would automatically qualify for the program, but other firms could apply for small business certification as well. An airport might decide to only operate the SBE contract goals program with no use of DBE contract goals or to operate the programs in parallel (some contracts would have an SBE goal and some would have a DBE goal).

If ODA were to explore implementing an SBE contract goals program, it would need to coordinate with the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) or another group regarding potential certification of SBEs and might approach ODOT for assistance with program rules and operation.

Recommendation concerning enforcement of prompt payment requirements. Federal regulations (49 CFR Section 26.29) require prime contractors on FAA-funded contracts to promptly pay all subcontractors performing work on those projects. ODA and other airports must require this provision in their DBE Program Plans and contracts for FAA-funded work, and monitor that prime contractors comply with this provision.

To improve the timeliness of invoice payments to consultants and their subconsultants, ODOT recently implemented an invoice partial payment process. A partial payment of 40 percent was determined by analyzing past data and through discussions with industry. ODA's Price Agreements and Work Order Contracts now reflect the ability to make partial payments. Keen Independent recommends that ODA continue to use this new provision as a standard practice in its future contract management.

Recommendations concerning race- and gender-conscious program elements. Regulations in 49 CFR Section 26.51(d) require agencies to use DBE contract goals to meet any portion of their overall DBE goals that they do not project to meet solely through neutral programs. ODOT and the Port of Portland currently operate DBE contract goals programs for their USDOT-funded contracts and COBID certifies firms as DBEs in the state.

Regulations governing the Federal DBE Program outline how an agency such as ODA would operate such a program. They include the following instructions.

- An agency using such a program would set goals expressing the percentage of contract dollars going to DBEs on certain FAA-funded contracts. It would determine those goals based on an assessment of the subcontracting opportunities on each contract, the availability of DBEs to perform that work and other factors.

- Prime contractors bidding on a contract with a DBE goal must either meet that goal or demonstrate good faith efforts to do so (sometimes shortened to “GFE”). Federal regulations govern what actions, when combined, constitute good faith efforts on the part of the prime contractor to meet a DBE contract goal (see 49 CFR Section 26.53).
- Contracts awarded with DBE goals must contain certain language committing the prime contractor to actions governing use of the DBEs that the contractor has listed for the project.
- When an airport has a contract with a DBE goal, it must monitor DBE participation in that contract to ensure that committed DBE participation is achieved by the prime contractor. There are provisions in the federal regulations that allow flexibility in the use of a specific DBE.
- There are provisions in the regulations (49 CFR Section 26.55) outlining how an agency should count DBE participation toward a goal, including determining whether the DBE is performing a commercially useful function on a contract.

The above points are examples of the requirements that an airport operating a DBE contract goals program must meet. Regulations and Official Guidance from USDOT supply additional provisions.

Recommendation to consider implementing DBE contract goals programs. If ODA or another airport participating in this study determines that it cannot meet its overall DBE goal solely through neutral means, it should consider the evidence presented in the study and other information to determine if it should operate a DBE contract goals program to help it meet its overall goal.

Recommendation to request a waiver from FAA concerning eligibility of DBE groups to meet contract goals. Keen Independent did not identify a disparity between the utilization and availability of Subcontinent Asian American-owned firms on airport FAA-funded contracts during the study period.

Ninth Circuit Court of Appeals rulings in *Western States Paving v. WSDOT* and in *AGC, San Diego v. Caltrans* as well as USDOT Guidance instruct agencies within the Ninth Circuit about how to operate race- and gender-conscious programs when it does not have sufficient evidence of discrimination for a particular DBE group. If ODA or other airports choose to use a DBE contract goals program, Keen Independent recommends that it request a waiver from FAA so that all DBEs except for those owned by Subcontinent Asian American men would be eligible to meet a DBE contract goal.

DBEs owned by Subcontinent Asian American men would still participate in other aspects of the Federal DBE Program and their participation would count toward achieving an airport’s overall DBE goal. Because there was evidence of discrimination against women identified in this study, including disparities in the utilization of white women-owned firms on airport contracts, DBEs owned by Subcontinent Asian American women would still be eligible for participation.

Recommendation for ODA to consider coordinating with ODOT in operating any DBE contract goals program. ODOT already uses DBE contract goals to help meet its overall DBE goal for its FHWA-funded contracts and plays a role in the contracting phase of many ODA FAA-funded contracts. Keen Independent recommends that ODA consult with ODOT concerning key elements of its DBE contract goals program based on its expertise and past success, especially for the steps prior to contract execution. ODA would perform needed contract compliance.

Recommendation for small non-ODA airports to consider obtaining external expertise when operating any DBE contract goals programs. Many agencies that operate small airports have retained consulting engineers to assist them in awarding and managing airport contracts. These engineering firms or their subconsultants may have the necessary expertise to help these airports operate a DBE contract goals program, including assistance in setting overall DBE contract goals, evaluation of any good faith effort submissions and contract compliance. Keen Independent recommends that non-ODA airports consider using this expertise if they implement a DBE contract goals program.

Other recommendations for DBE Program operations. ODA and other airports should review the following recommendations as well.

Focus on FAA-funded contracts. This disparity study only examined FAA-funded contracts at ODA and participating airports and no contracts entirely funded by state or local funds. Therefore, the recommendations made here are specific to FAA-funded contracts.

Necessity of following all federal regulations when implementing any DBE contract goals programs. Keen Independent has summarized key elements of program operations, but ODA and other airports should refer to comprehensive regulations in 49 CFR Part 26 and associated USDOT Guidance when designing and operating any DBE contract goals programs. There are many important components to program operation beyond those mentioned in this report.

Monitoring potential overconcentration of DBEs in certain types of work. Regulations in 49 CFR Section 26.33 require agencies operating the Federal DBE Program to take certain steps if they determine that DBEs are overconcentrated in a certain type of work in a way that would unduly burden non-DBE firms to participate in that type of work. Keen Independent's analysis did not find such overconcentration. Assessment of potential overconcentration should be a topic in airports' periodic review of program operation, as discussed below.

Periodic review. Many of the public agencies located within the Ninth Circuit that have DBE contract goals programs conduct disparity studies every three to five years. Those studies help agencies update availability information as well as assess whether there is current evidence supporting continued use of any race- and gender-conscious programs.

Keen Independent recommends that ODA and other airports periodically update this disparity study to remain in compliance with USDOT regulations and Guidance and relevant court decisions, especially if they implement race- and gender-conscious programs such as DBE contract goals.

Public Comment Process for the 2021 Disparity Study Report

ODA and Keen Independent held public meetings from the beginning of the study to obtain input from stakeholders and other interested groups. Information about the public meetings was available on the study website. Public meetings included:

- Fall 2019 OAMA Conference, Crater Lake-Klamath Regional Airport;
- December 2019 Board Meeting, Corvallis;
- Spring 2020 OAMA Conference, Salem;
- April 2020 ODA Board Meeting, virtual;
- August 2020 ODA Board Meeting, virtual;
- November 2020 OAMA Meeting, virtual;
- February 2021 ODA Board Meeting, virtual; and
- Spring 2021 OAMA Business Teleconference, virtual.

Keen Independent published the 2021 Oregon Statewide Airport DBE Disparity Study report for public comment before finalizing the report. The public had the opportunity to submit feedback and provide written comments to Keen Independent via the study website, telephone hotline, email and regular mail or by contacting ODA directly. The public comment period extended from late January to late February 2021.

The final report reflects comments received on the draft report during the public comment period.

ODA and other airports will be able to review this information when determining their overall DBE goals and approach to meeting those goals prior to submission to FAA.