

ODOT Office of Civil Rights Disadvantaged Business Enterprise Advisory Committee

Barrier and Recommendation Paper

3/13/2023

Barrier: Classification for Indigenous origins from countries in North, Central, and South America	
Barrier overview	<p>There is not an identity classification for DBEs for people who are indigenous to the Americas and to a place that is not the United States. The current Native American classification only considers tribes recognized by the US government. This results in individuals who are native to other countries in North, Central, and South America being included in inaccurate identity categories, including Hispanic.</p> <p>This barrier has been raised by a DBE owner for many years. ODOT has asked FHWA about it and has not had success in removing this barrier.</p>
Impact on DBE firms	<p>This barrier impacts disadvantaged business enterprises owned by those who are indigenous to countries in the Americas other than the U.S. It groups them incorrectly with other identity classifications.</p>
Past or current ODOT actions to address this barrier	<ul style="list-style-type: none"> ▪ Collaboration with Federal Highway Administration (FHWA)
Potential structural issues or conflicts	<ul style="list-style-type: none"> ▪ Any path forward to acknowledge people who are indigenous to places in the Americas not including the US needs to not displace the recognition of people who are members of federally recognized tribes in the US and the responsibility of US and state governments related to the specific harms they did to people who are indigenous to the geographic area of what is now the United States. ODOT and FHWA need to consider how any solution intersects with recognized sovereign nations.

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	<ul style="list-style-type: none"> ▪ Currently Native Americans have to prove they are part of recognized nations. ▪ The U.S. Census, FHWA and the Office of Management and Budget (OMB) define indigenous as a racial categorization that includes American Indian or Alaska Native as a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment. Based on this definition, the DBE Advisory Committee needs to identify if there is indeed a barrier to address beyond recommending that the FHWA follow the definition and standards of OMB and the Census Bureau. ▪ Some definitions of Indigenous focus on racial identity and some on ethnic identity. ▪ Coordination with other agencies is dependent on recommendations from FHWA. ▪ This could lead to other requests to further specify identity classifications by country of origin. ▪ There are potential future issues to address related to certification by race or ethnicity. ▪ Want ODOT to pursue both recommendations, not one at the expense of the other.
<p>Agency partners in addressing barrier</p>	<ul style="list-style-type: none"> ▪ FHWA ▪ Other federal bodies, including the Office of Management and Budget, Census Bureau; Small Business Administration; and Department of Commerce.
<p>Recommendation</p>	<ul style="list-style-type: none"> ▪ Make recommendations to FHWA that they apply the racial definition of indigenous used by the Census Bureau and OMB. Specifically, request expansion of the current classification to include individuals native to North, Central, and South America. Ensure this definition does not compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA. ▪ Initiate a process for recognition on state funded projects that do not need to comply with FHWA DBE program rules. Ensure this definition does not

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	compromise the rights of recognized sovereign nations and people who are indigenous to the USA.	
Advisory Committee consent	[Yes/No]	
Actions	Near-term	<ul style="list-style-type: none"> ▪ Develop position letter to FHWA. ▪ Explore opportunities to include this identity classification in other state programs. ▪ Explore the Port of Seattle model that looks at intersectional identities as a model.
	Longer-term	Continue coordination with FHWA on this matter.
Cost considerations	No costs anticipated.	
Outcomes of implementing recommendation	<ul style="list-style-type: none"> • Efforts to increase inclusion will potentially lead to an increase in DBE involvement and contractor diversity. • Potential to result in increased competition between DBEs and small businesses and further dilution to the opportunity pool of available work. 	