

ODOT Office of Civil Rights Disadvantaged Business Enterprise Advisory Committee

Barrier and Recommendation Paper

3/13/2023

Barrier: Payment schedule and lack of prompt pay	
Barrier overview	<p>DBE firms are at a disadvantage when prompt pay schedules, which ensure that ODOT and prime firms pay their (sub)contracts within 10 calendar days of satisfactory work being completed, are not enforced.</p> <p>This barrier has been identified in previous bodies of work, including the 2022 Disparity Study and the ODOT BIPOC Contracting Expansion Anti-Oppression Barriers Analysis.</p>
Impact on DBE firms	<p>DBE firms are often small and have cash flow limitations. The lack of prompt payment to contractors by both ODOT and prime firms to whom DBEs subcontract to, despite guidance from ODOT to do so, puts these firms at an economic disadvantage. The absence of prompt pay can result in challenges to balancing accounts, planning for hours, labor and materials, and administering payroll.</p>
Past or current ODOT actions to address this barrier	<ul style="list-style-type: none"> ▪ ODOT ceased withholding retainage on all projects advertised after January 1, 2020. ▪ Primes complete a form that defines payment dates.
Potential structural issues or conflicts	<p>ODOT has limited ability to enforce prime’s subcontractor requirements.</p>
Agency partners in addressing barrier	<ul style="list-style-type: none"> ▪ ODOT Procurement ▪ ODOT Project Manager ▪ ODOT Resident Engineer ▪ Construction Section
Recommendation	<ul style="list-style-type: none"> ▪ Implement both short term and long-term project systems that track and report project payments made by ODOT and its prime firms to (sub)contractors and assess penalties for late payments. Reinforce use of systems that allow DBE firms to monitor payments.

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	<ul style="list-style-type: none"> ▪ ODOT commits to checking with DBE firms about how the system is working for them within three months after AASHTOWare implementation. ▪ Make invoices subcontractors submit to primes visible to ODOT. ▪ Add ODOT point-of-contact for DBEs to every contract and shift the follow-up with the prime from the DBE to the ODOT point-of-contact. ▪ Provide a payment option other than pay-when-paid. ▪ Include the topic of payments in pre-construction meeting and status check meetings that include the prime, sub(s), and construction inspector. 	
Advisory Committee consent	[Yes/No]	
Actions	Near-term	<ul style="list-style-type: none"> ▪ New database, AASHTOWare, implementation in October 2023, will provide notification when firms are not adhering to prompt payment. ▪ Continue work with other ODOT departments to implement prompt payment to subcontractors in 10 days from the date a prime receives payment from ODOT.
	Longer-term	<ul style="list-style-type: none"> ▪ Implement long term AASHTOWare use. ▪ Change in contracting and payment monitoring systems so that subcontractors are part of payment schedules and processing documentation.
Cost considerations	No cost anticipated.	
Outcomes of implementing recommendation	Implementing systems that track and report project payments made by ODOT and its prime firms to (sub)contractors, along with penalties for late payments, will ensure that DBE firms are paid in a timely manner, thus helping to ensure economic viability of these firms.	

