

# ODOT Office of Civil Rights Disadvantaged Business Enterprise Advisory Committee

## Barrier and Recommendation Paper

3/13/2023

Barrier: Low-bid contracting	
<p><b>Barrier overview</b></p>	<p>The requirement that ODOT award contracts to the “lowest responsive and responsible bidder” is a barrier to DBE firms who can better compete and be successful on projects that offer flexibility and options for unique, complex, or schedule-critical projects.</p> <p>Many DBEs experience higher administrative overhead costs than larger firms. Bonds, which are required on all construction projects, cost more for DBEs and small businesses. This cost can eliminate the DBE from competitively bidding on a large project.</p> <p>This barrier has been identified in previous bodies of work, including the ODOT BIPOC Contracting Expansion Anti-Oppression Barriers Analysis and the Oregon Minority Contracting Task Force.</p>
<p><b>Impact on DBE firms</b></p>	<p>DBEs are frequently not successful winning projects that prioritize the lowest bidder.</p>
<p><b>Past or current ODOT actions to address this barrier</b></p>	<ul style="list-style-type: none"> <li>▪ ODOT is updating language and requirements for alternative contracting methods through a new group who focus on alternative contracting.</li> </ul>
<p><b>Potential structural issues or conflicts</b></p>	<ul style="list-style-type: none"> <li>▪ Most DBEs have structured their businesses around traditional design-bid-build contract mechanisms where design happens in a separate contract prior to construction activity.</li> <li>▪ State law requires that ODOT award contracts to the lowest “responsive and responsible bidder” unless they use an alternative delivery method or create a specific exemption. (Oregon Revised Statute   ORS 279C.335, Competitive Bidding: <a href="https://oregon.public.law/statutes/ors_279c.335">https://oregon.public.law/statutes/ors_279c.335</a>)</li> <li>▪ Insurance requirements often contribute to the high cost of small firm bids. ODOT needs to assess if this is</li> </ul>

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	an additional barrier to address for this recommendation to be useful.	
<b>Agency partners in addressing barrier</b>	<ul style="list-style-type: none"> <li>▪ Federal Highway Administration (FHWA) and other federal bodies</li> <li>▪ Oregon Transportation Commission (OTC)</li> <li>▪ Other relevant ODOT departments</li> </ul>	
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>▪ Create more contracting processes that waive the lowest bid requirements, maybe other criteria, including best value or “lowest and best” to provide for contracting flexibility needed to allow DBE firms to compete.</li> <li>▪ Modify the mentor-protégé program for the partnership to center on small firms winning more work after competing.</li> <li>▪ Develop survey or use disparity study data to ascertain specifics about low bid barriers in ODOT contracting opportunities to target our efforts for meaningful outcomes.</li> <li>▪ Develop a class regarding bonding and insurance.</li> <li>▪ Develop a sample bid booklet as an example for responsive submittal.</li> </ul>	
<b>Advisory Committee consent</b>	[Yes/No]	
<b>Actions</b>	Near-term	<ul style="list-style-type: none"> <li>▪ Work with relevant ODOT departments to develop a plan for defining a best value approach to bid evaluation.</li> <li>▪ Explore options to incentive large firms that participate in the mentor-protégé program to invest in their protégé firms.</li> <li>▪ Look at capacity building programs like the programs at WSDOT and the Port of Portland.</li> <li>▪ Promote the new law regarding primes using certified firms to win points but then not using the certified firm on the project or for a smaller scope of work than agreed to.</li> </ul>
	Long-term	<ul style="list-style-type: none"> <li>▪ Redefine the rules around which contracts are set as low</li> </ul>

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		bid, including working with the legislature, OTC, and others.
<b>Cost considerations</b>	Staffing costs to evaluate, develop and administer alternative contracting methods and associated greater number of contracts. Staffing costs to invest in modifying mentor-protégé program.	
<b>Outcomes of implementing recommendation</b>	Adding more alternative delivery methods contracts to the ODOT procurement process will provide DBE firms with contract flexibility, increasing their competitiveness on contracts and creating systems for them to deliver projects more easily and successfully.	