

ODOT Office of Civil Rights Disadvantaged Business Enterprise Advisory Committee

Barrier and Recommendation Paper

7/5/2023

Barrier: Access to work under bundled construction contracts	
<p>Barrier overview</p>	<p>DBE firms struggle to compete with larger, multi-disciplinary firms for bigger, bundled projects that have many components and require several areas of expertise, such as engineering, communications, surveying, ecological analysis, economics, and construction from bidders.</p> <p>Bundling by ODOT of multiple projects together or including multiple areas of expertise in a project are barriers for DBE firms.</p> <p>Conversely, unbundling work by the prime during design or construction are also barriers for DBE firms.</p> <p>While a lack of unbundled contracts is a barrier for some DBEs, DBEs recognize a larger, more systemic barrier that ODOT needs to address. ODOT needs to establish a holistic, consistent process for engaging, supporting, and tracking DBEs. ODOT recognizes that there may be multiple contributing factors and thus multiple solutions.</p>
<p>Impact on DBE firms</p>	<p>Specialized DBE businesses that offer focused services are most impacted by this barrier in the following ways:</p> <ul style="list-style-type: none"> ▪ Large, multi-faceted contracts favor multi-disciplinary teams, including those who have been established by prime contractors who offer more than one service or who can access teaming partners who offer these services. ▪ Large contract values put DBE firms at a disadvantage because of bonding and insurance requirements.
<p>Past or current ODOT actions to address this barrier</p>	<ul style="list-style-type: none"> ▪ Coordinate with relevant state departments and leadership about the impacts of bundled projects on DBE firms planning around development of possible

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	<p>parameters that may result in more unbundled projects.</p> <ul style="list-style-type: none"> ▪ Continue tracking of current DBE participation rates. ▪ Continue survey work of the DBE community to identify potential subcontractors who have not yet worked with ODOT. 	
Potential structural issues or conflicts	<ul style="list-style-type: none"> ▪ ODOT currently bundles contracts for efficiency. ▪ Federal funding comes to ODOT bundled. ▪ Need to consider who would assume legal responsibility to ensure small firms' scope, schedule, and budget adhere to the overall project needs. This typically is the prime contractor's responsibility, but in unbundled contracts, could be ODOT's responsibility. ▪ Prime firms have the ability to break contracts into smaller scopes of work, but there is no expectation or accountability from ODOT to do that. ▪ Need to identify how to add value to smaller scopes of work and how to increase benefits to unbundling contracts. 	
Agency partners to addressing barrier	<ul style="list-style-type: none"> • ODOT Project Delivery • ODOT Procurement • Other relevant ODOT departments • Large firm (prime) agencies 	
Recommendation	<p>ODOT expands its DBE program to include more focused resources and staff to track DBE activities, services, and offerings, and provide direct and specialized support based on the DBE's needs and experiences. Specifically:</p> <ul style="list-style-type: none"> ▪ ODOT invests time in engaging with DBEs to understand what nontraditional services and products are offered by the subcontracting community. ODOT catalogs DBE services and offerings and integrates them into RFPs. ▪ ODOT provides support to DBEs in joint ventures and teaming for larger contracts. ▪ ODOT implements systems for incentivizing and/or penalizing prime firms for how they unbundle or bundle contracts. 	
Advisory Committee consent	[Yes/No]	
Actions	Near-term	<ul style="list-style-type: none"> ▪ ODOT Supportive Services identifies internal and external resources for DBEs to expand their support and access.

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		<ul style="list-style-type: none"> ▪ Talk to Earl Keys about WSDOT’s efforts in unbundling contracts. ▪ Work with the advisory committee to identify specific barriers related to insurance and bonding (capital; credit ratings; bond costs and requirements; insurance requirements, limits, and cost, etc.). Include ODOT Procurement Risk Manager in the conversation. ▪ Work with ODOT Project Delivery and/or other relevant departments to unbundle more projects. ▪ Identify the products, services, and subcontractors being used on a project that do not have a North American Industry Classification System (NAICS) code, procurement line items, or opportunities to bid. ▪ Inventory small firms and the different products and services they provide. ▪ Invite a federal contracting representative to participate in conversations with DBE companies to hear the impact of their current practices. ▪ Develop metrics around DBE participation and various contracting mechanisms. ▪ Research best practices within other state department of transportation offices.
	<p>Longer-term</p>	<ul style="list-style-type: none"> ▪ Develop partnerships with federal government and other state departments to continue to explore various avenues in unbundling projects to increase DBE opportunities. ▪ Partner with federal government to update the NAICS to reflect new services and scopes in the industry.

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		<ul style="list-style-type: none">▪ Monitor contracting mechanism and DBE participation.▪ Research strategies to incentivize DBE participation in ODOT projects.
ODOT cost considerations	Potential costs related to staffing associated with a greater number of smaller contracts. Potential for higher project costs when unbundled.	
Outcomes of implementing recommendation	A greater number of smaller unbundled contracts would provide an opportunity for DBEs to compete more effectively for contracts that are appropriately sized and scoped.	