

ODOT DBE Advisory Committee 2023 Executive Summary

July 2023

Overview

In September 2020, the Oregon Transportation Commission provided funding for the Oregon Department of Transportation’s Office of Civil Rights (OCR)¹ to strengthen Disadvantaged Business Enterprise (DBE) supportive services. OCR used this funding to identify and address barriers DBE firms face when competing for work and contracting with ODOT.

To center DBE perspectives in this process, ODOT established an advisory committee made up of representatives from DBE firms, large firms who often serve as prime contractors, and industry partners with a mission to helping promote and develop business for DBE firms. This first committee cohort met eight times between September 2022 and July 2023, each meeting building on the previous content to culminate in recommendations to ODOT. Recommendations referenced existing policies and plans.

During the founding year of the advisory committee (July 2022 through July 2023), efforts to form and facilitate the committee were supported ODOT’s Office of Equity and Civil Rights (OECR) and consultants from PRR, collectively referenced as “the project team” in the report.

Future advisory committee cohorts will continue this work, while also monitoring ODOT’s progress toward implementing recommendations from prior cohorts.

This executive summary provides a high-level overview of the work of the advisory committee and recommendations for future cohorts.

¹ This ODOT department went through reorganization during the project. When the project started, the department was named the Office of Civil Rights (OCR), then, during the reorganization, the name changed to Office of Equity and Civil Rights (OECR). The department is referred to as OECR throughout this report.

Priority barriers and recommendations

The committee identified six priority barriers and identified recommendations to ODOT to address them.

Barrier	Recommendations
<p>1. Classification for Indigenous origins from countries in North, Central, and South America</p>	<p>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.</p>
	<p>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 compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA.</p>
<p>2. Difficulty obtaining task approvals</p>	<p>Create clear and measurable standards and share them with contractors.</p>
	<p>Incorporate training and accountability for inspectors. Identify specific pathways for holding inspectors accountable.</p>
	<p>Coordinate with ODOT Construction Section to include recommendation that subcontractors be included in inspector meetings with primes to avoid decision-making happening without subcontractor awareness or involvement. Implement a program or channel for DBEs to raise issues or concerns that they are experiencing.</p>
	<p>Address barrier as a systemic issue within the Construction Section that impacts all contractors and subcontractors.</p>
	<p>Consider a task approval department with dedicated capacity to maintain the task approval process and support DBEs through it.</p>

Barrier	Recommendations
<p>3. Challenges with open communication with primes and access to prime agreements</p>	<p>Establish and communicate to DBEs standardized expectations that all prime contractors need to adhere to regarding information sharing with subcontractors. Include these expectations in all contracts between ODOT, primes, and subcontractors. Specifically:</p> <ul style="list-style-type: none"> ○ Require all DBE contracts to include language that subcontractors will have access to the prime contract. ○ Include scoring of open communication and information sharing with subcontractors in Prime Contractor Performance Evaluations. ○ Require prime contractors to include DBEs in pre-construction meetings and weekly project coordination meetings. ○ Commit to holding prime contractors accountable and enforce compliance to DBE program standards. Establish penalties on prime firms for not adhering to information sharing expectations.
<p>4. Payment schedule and lack of prompt pay</p>	<p>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.</p> <p>Make invoices subcontractors submit to primes visible to ODOT.</p> <p>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.</p> <p>Provide a payment option other than pay-when-paid.</p> <p>Include the topic of payments in pre-construction meeting and status check meetings that include the prime, sub(s), and construction inspector.</p> <p>ODOT follows up with DBE firms about how the system is working for them within three months after AASHTOWare implementation.</p>

Barrier	Recommendations
5. Low bid contracting requirements	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.
	Modify the mentor-protégé program for the partnership to center on small firms winning more work after competing.
6. Access to work under bundled Architectural & Engineering (A&E) and construction contracts	Explore ways for ODOT Project Delivery and/or other relevant departments to unbundle more projects.
	Explore opportunities for Agency use of other (alternative) contracting methods that may offer smaller work packages suitable for DBE contractors.
	Explore ways for ODOT to incentivize and/or penalize prime firms for how they unbundle (or bundle) contracts.

Committee membership

This first committee cohort included 13 DBE business representatives, four industry partners, and three large firms. Because state disparity studies found that minority owned businesses, meaning they are owned by people who are Black, Indigenous, and People of Color (BIPOC), experience the most barriers, the team prioritized including such businesses, including those with Minority Business Enterprise (MBE) certification.

Of the 13 DBE businesses represented in this cohort²:

- 10 were certified Minority Owned Enterprises (MBEs).
- One was minority owned (BIPOC) owned, but not MBE certified.
- One was veteran owned.
- Six were Women Owned Business Enterprises (WBEs).

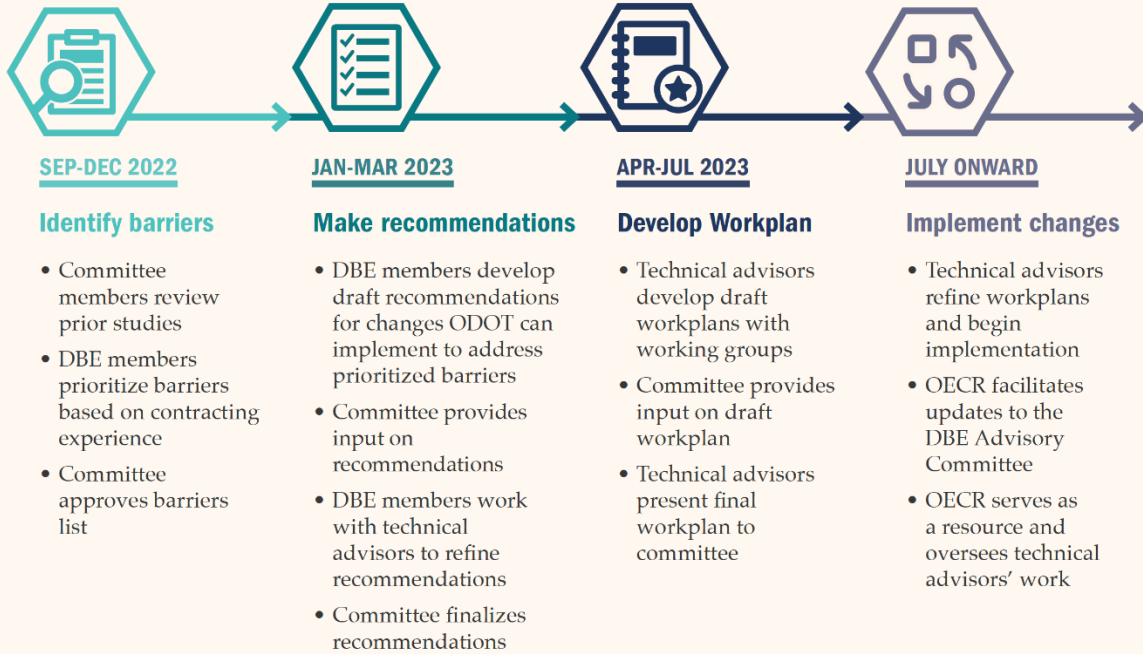
The committee was administered and supported by OECR and their consultant, PRR, with technical advisors from several Oregon state agencies.

Committee meeting structure and work program

With an established committee, ODOT OECR administered the work program with support from consultant PRR, who developed the facilitation approach, including the decision-making process, and facilitated the committee meetings. The following graphic describes the committee's work program.

² The total is more than 13 as some of the businesses have multiple certifications.

DBE Advisory Committee Process



Recommendations for future cohorts

Based on observations from of the facilitation team, input from technical advisors, conversations with advisory committee members, and consultation with OECR staff, the facilitation team has the following recommendations for ODOT's work with future cohorts.

ODOT follow-through Communicate what you are doing to address barriers regularly, honestly, and transparently with small businesses.

Compensation Update the current compensation program so committee members can easily access it.

Second cohort: 2023 - 2024 Have the 2023 to 2024 cohort focus on the current six recommendations and invite 2022-23 cohort members to continue the work for the next year meeting monthly in the working groups with their technical advisors, and quarterly as a full committee on the same schedule as 2022-23.

Future cohorts For cohorts starting 2024-25, the project team recommends the following:

- Limit the work program to two barriers.
- Break the advisory committee into working groups earlier in the program.
- Take the time to communicate the committee's work to the larger DBE community, to the larger consulting community, to other Oregon agencies, and to other ODOT staff.
- Convene technical advisors monthly to collaborate on technical content and on the best ways to support and engage the advisory committee members.
- Have meetings at a regular schedule and communicate it early and often.
- Continue to recruit a combination of small businesses who have DBE certification and small businesses that do not.
- Continue to prioritize small businesses that have ownership structures and identities that are consistent with those identified as having the most barriers in the disparity studies, especially businesses owned by people who are Black, Indigenous, and other People of Color.
- Develop an onboarding system with clear descriptions of the work and expectations of membership.
- Consider focusing on specific types of contracts.

Staffing support The recommended staffing is three core staff people who will average 15 to 20 hours per week across the team to implement this work.³ We recommend the three core staff people include a lead facilitator, a co-facilitator, and a program coordinator.

³ This is a total number of hours for these three individuals and will likely be unevenly distributed depending on the specific tasks. These hours do not include oversight or internal review and approval process or technical support for virtual meeting.