

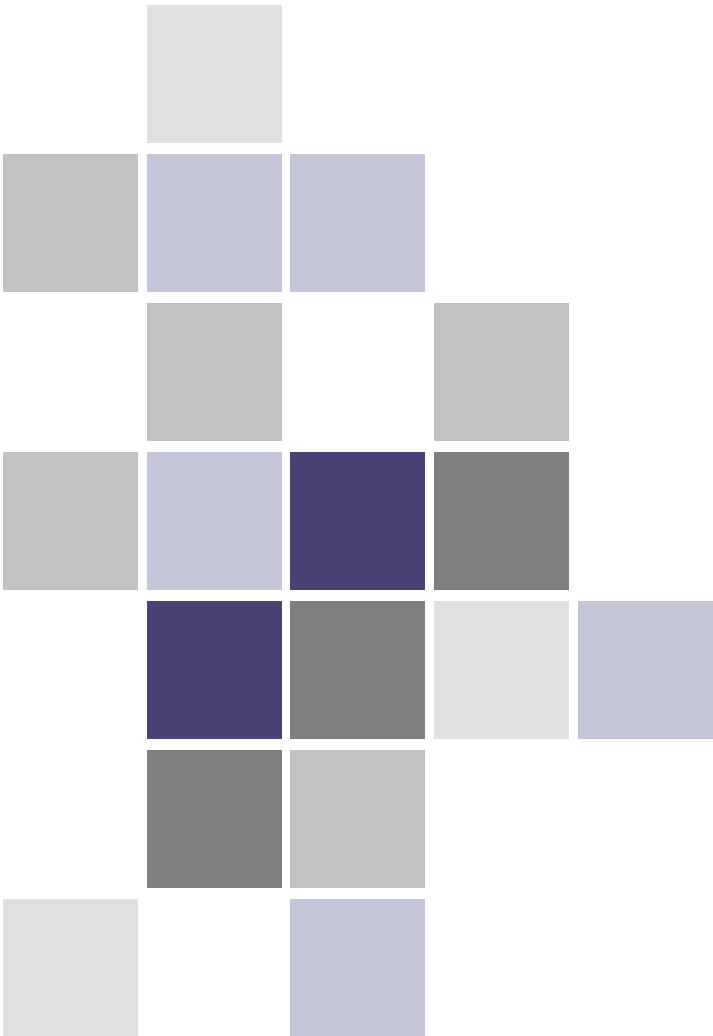


DISADVANTAGED BUSINESS ENTERPRISE DISPARITY STUDY

ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

Final Report

March 2021



ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
DISADVANTAGED BUSINESS ENTERPRISE DISPARITY STUDY

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EXECUTIVE SUMMARY

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



I. INTRODUCTION

In September 2019, the Alaska DOT&PF Civil Rights Office (CRO) contracted with MGT Consulting Group, LLC, (MGT) to conduct their DBE Availability and Disparity Study Update. This is a five-year study and includes construction and professional services procurement activities from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).

CHAPTER SECTIONS



1. Introduction
2. Key Findings
3. Conclusion

The Ninth Circuit in *Western States* established a two-prong test: (1) the agency must establish the presence of discrimination in its own transportation industry, and (2) the affirmative action program must be “limited to those groups that have actually suffered discrimination.”¹ A disparity study determines if there are any disparities between the utilization of minority, women, or disadvantaged business enterprises (M/W/DBEs) compared to the availability of M/W/DBEs in the marketplace who are ready, willing, and able to perform work and examines M/W/DBE utilization in the absence of goals. The focus of this summary is on utilization and disparities in subcontracting, the core of the DBE goals program.

In the following text, M/W/DBEs includes minority- and women-owned firms that are certified DBEs and that are not certified DBEs.

2. KEY FINDINGS

FINDING A: M/W/DBE CONSTRUCTION UTILIZATION AND DISPARITY

The dollar value of M/W/DBE utilization on DOT&PF projects over the current study period from October 1, 2014 to September 30, 2019, within the relevant market was as follows:

- ◆ During the study period M/W/DBE firms awarded contracts totaled \$418.8 million, 17.68 percent of the total construction dollars; MBEs were awarded \$298.8 million in contracts, 12.61 percent of the total construction dollars (**Table ES-1**). There was disparity for African Americans in construction, as well as substantial disparity for American Indians/Alaska Natives and for Asian Pacific Islanders on DOT&PF projects.

TABLE ES-1.
SUMMARY OF CONSTRUCTION UTILIZATION BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION ALASKA DOT & PF
OCTOBER 1, 2014 THROUGH SEPTEMBER 30, 2019

BUSINESS OWNERSHIP CLASSIFICATION	FHWA (\$)	FAA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$206,978,136	\$91,888,174	\$0	\$298,866,310
Nonminority Women	\$110,204,184	\$9,813,303	\$0	\$120,017,487
Total M/W/DBE Firms	\$317,182,320	\$101,701,478	\$0	\$418,883,797
	(%)	(%)	(%)	(%)
Minority Business	11.40%	16.60%	0.00%	12.61%
Nonminority Women	6.07%	1.77%	0.00%	5.07%
Total M/W/DBE Firms	17.47%	18.37%	0.00%	17.68%

- ◆ DBE certified construction firms were awarded contracts totaling \$163.7 million, 6.91 percent of the total construction dollars.

FINDING B: M/W/DBE PROFESSIONAL SERVICE UTILIZATION

- ◆ During the study period M/W/DBE firms awarded professional service contracts totaled \$24.0 million, 17.38 percent of the total professional services dollars; MBEs were awarded \$18.9 million in contracts, 13.70 percent of the total professional services dollars (**Table ES-2**). Certified DBE professional services contractors won 9.13 percent of the dollars awarded.

TABLE ES-2.
SUMMARY OF PROFESSIONAL SERVICES UTILIZATION BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION
ALASKA DOT & PF
OCTOBER 1, 2014 THROUGH SEPTEMBER 30, 2019

BUSINESS OWNERSHIP CLASSIFICATION	FHWA (\$)	FAA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$11,607,548	\$7,379,935	\$0	\$18,987,483
Nonminority Women	\$3,542,172	\$1,561,737	\$0	\$5,103,910
Total M/W/DBE Firms	\$15,149,721	\$8,941,672	\$0	\$24,091,393
	(%)	(%)	(%)	(%)
Minority Business	11.78%	18.43%	0.00%	13.70%
Nonminority Women	3.60%	3.90%	0.00%	3.68%
Total M/W/DBE Firms	15.38%	22.33%	0.00%	17.38%

FINDING C: NORTHERN REGION UTILIZATION

The findings differed somewhat when the data were examined on a regional basis. In the Northern Region in particular, there was a significant difference in M/W/DBE construction utilization. In that region M/W/DBEs were awarded 30.00 percent of construction dollars (**Table ES-3**).

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FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION	NORTHERN REGION	SOUTHCOAST REGION
	Percent (%)	Percent (%)	Percent (%)
M/W/DBE Firms			
African Americans	0.08%	2.55%	0.00%
Alaska Native Corporation	4.26%	6.92%	0.41%
Alaska Tribal Corporation	0.00%	0.00%	0.00%
American Indians/Alaska Natives	0.97%	2.19%	3.57%
Asian Indian/Pacific Islanders	0.00%	0.00%	1.75%
Hispanic Americans	0.53%	14.78%	0.01%
Nonminority Women	6.10%	3.57%	4.81%
Total M/W/DBE Firms	11.93%	30.00%	10.55%
Non-M/W/DBE Firms	88.07%	70.00%	89.45%

KEY RECOMMENDATION: PROPOSED DBE GOALS

MGT proposes the following annual DBE goals for DOT&PF by transportation mode for the upcoming period (**Table ES-4**):

TABLE ES-4.
PROPOSED DBE GOALS, PAST DBE AND M/W/DBE OVERALL UTILIZATION,
FFY2015-FFY2019 DBE GOALS
FHWA, FAA, FTA

Mode	Proposed DBE Goal	DBE Utilization in Study Period	M/W/DBE Utilization in Study Period	Previous FFY 2012-14 Study DBE Goal
FHWA	10.49%	6.25%	17.36%	3.60%
FAA	10.56%	9.55%	18.64%	2.80%
FTA	10.51%	0.00%	0.00%	5.40%

In summary, no Step 2 adjustments are made to the DBE goals presented. However, the Alaska DOT&PF may decide to apply a Step 2 adjustments as needed if they believe they are warranted.

3. CONCLUSION

Based on the level of non-goal M/W/DBE subcontractor participation, the statistical analysis in the study did not provide a strong factual predicate for across-the-board race- and gender-conscious DBE subcontractor goals or setting a race-conscious component of the annual DBE goal. The proposed race neutral DBE goals are outlined in **(Table ES-4)** above.

ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
DISADVANTAGED BUSINESS ENTERPRISE DISPARITY STUDY

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CHAPTER I. INTRODUCTION

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



I.1 BACKGROUND

The U.S. Department of Transportation (U.S. DOT) requires that state and local transportation agencies which receive U.S. DOT financial assistance implement a Disadvantaged Business Enterprise (DBE) program based on regulations found in 49 C.F.R. Parts 23 and 26. The DBE program is designed to address potential discrimination against DBEs in the awarding of U.S. DOT funded contracts. There are three major U.S. DOT operating administrations involved in the DBE program: the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). State DOTs must set DBE goals annually based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on U.S. DOT-assisted contracts. Regulations state that a disparity study can be used to provide information to help implement the DBE program.

CHAPTER SECTIONS



- 1.1 Background
- 1.2 Overview of Study Approach and Methodology
- 1.3 Report Organization

A disparity study determines if there are any disparities between the utilization of minority, women, or disadvantaged business enterprises (M/W/DBEs) compared to the availability of M/W/DBEs in the marketplace who are ready, willing, and able to perform work.

The State of Alaska Department of Transportation and Public Facilities (DOT&PF) last conducted an Alaska DBE Availability and Disparity Study in 2014. This was a five-year study and included procurement activity from October 1, 2006 through September 30, 2011 (FFY2007 – FFY2011).

In September 2019, the DOT&PF solicited proposals for a contractor to conduct a DBE Availability and Disparity Study Update. In December 2019, the DOT&PF Civil Rights Office (CRO) contracted with MGT of America Consulting, LLC (MGT) to conduct their DBE Availability and Disparity Study Update. This is a five-year study and includes procurement activities from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).

According to the Scope of Services outlined in the RFP, the primary objectives of this study were to identify and characterize the following:

- ◆ The extent to which DBEs participate in the procurement of U. S. DOT federally funded highway/airports/transit contracts in general construction services.
- ◆ If DBE participation is representative of the availability of DBEs that are ready, willing, and able to participate in federally assisted DOT&PF contracts.
- ◆ The magnitude of differences between DBE availability (based on capacity) and DBE participation on federally assisted DOT&PF contracts.
- ◆ Whether discrimination exists. If found, identify the race, ethnicity, and gender of all groups affected (by U.S. DOT modal group and individually).

- ◆ Identify presumed disadvantaged groups that are over or underutilized for federally assisted DOT&PF contracts based on their availability.

1.2 OVERVIEW OF STUDY APPROACH AND METHODOLOGY

MGT followed a work plan that allowed study team members to analyze the availability and utilization of M/W/DBEs in the procurement practices of the DOT&PF. The availability and disparity study analyzed two categories of contracting opportunities in order to identify whether a statistical disparity exists, which may indicate the existence of past or present, public or private, discrimination in the appropriate local market area:

1. The award and procurement of construction contracts by the DOT&PF.
2. The award and procurement of professional services contracts by the DOT&PF.

MGT's overall approach and methodology utilized research methods consistent with predominant, controlling, and relevant legal precedents. Specifically, MGT's approach addressed these precedents by analyzing prime only contracts in conjunction with subcontractor only contracts to understand the whole universe of procurements in its totality, decomposing data by procurement type and commodity codes, , and conducting multiple private sector econometric analyses. After MGT deployed these methodologies and collected and analyzed data, the study team reviewed the data and preliminary findings with the DOT&PF and obtained approval on their accuracy, reliability, and validity prior to producing a report for review and comment.

Part of this approach entailed close communication with the DOT&PF to ensure full and complete understanding and acceptance of these methodologies before they were deployed. MGT's methodology in managing complex tasks of studies include incorporating project management as an objective; ongoing communications regarding project expectations, deliverables, and methodologies; and a work plan that accomplishes the objectives of the study.

MGT's work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize a work plan.
- ◆ Review policies, procedures, and programs.
- ◆ Conduct the market area and utilization analysis.
- ◆ Determine the availability of qualified firms.
- ◆ Analyze the utilization and availability data for disparity.
- ◆ Conduct a survey of business owners.
- ◆ Collect and analyze anecdotal information.
- ◆ Prepare and present the final report for the study.

Throughout the study, MGT assessed MBEs and WBEs, regardless of DBE certification or any other certifications, in the utilization, availability, disparity, and marketplace analyses. Therefore, these analyses pertain to any potential barriers that may be related to the race, ethnicity, and gender of

business owners. If the disparity analysis were based only on certified DBEs, MGT would not be able to draw conclusions or make recommendations for program improvements for M/W/DBEs in the marketplace.

I.3 REPORT ORGANIZATION

In addition to this introductory chapter, this report consists of:

CHAPTER 2 LEGAL ANALYSIS

Provides an update to the DOT&PF 2014 disparity study legal review.

CHAPTER 3 SUMMARY OF POLICIES, PROCEDURES, AND PROGRAMS

Provides a review of DOT&PF's DBE policies, procedures, programs, and race- and gender-neutral efforts.

CHAPTER 4 MARKET AREA AND UTILIZATION ANALYSES

Presents the methodology used to determine the DOT&PF's relevant market area and statistical analysis of vendor utilization by the DOT&PF for procurement of contracting services.

CHAPTER 5 AVAILABILITY AND DISPARITY ANALYSES

Provides a discussion of the availability of firms and the levels of disparity for vendors as well as a review of the multivariate analysis for the DOT&PF.

CHAPTER 6 PRIVATE SECTOR ANALYSES

Provides an analysis of contracting disparities in the private sector to determine if evidence exists to continue the DOT&PF's DBE programs to avoid becoming a passive participant in discrimination.

CHAPTER 7 ANECDOTAL ANALYSIS

Presents an analysis of anecdotal data collected from the survey of business owners, in-depth interviews, focus groups, and public meetings.

CHAPTER 8 FINDINGS AND RECOMMENDATIONS

Provides a summary of the findings presented in previous chapters along with commendations and recommendations.

APPENDICES

Presents additional analyses, documents used to conduct the study, and back up documentation.

The consultant team recommends reading the report in its entirety to understand the basis for the findings and conclusions presented in **Chapter 8**.

CHAPTER 2. LEGAL ANALYSIS

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



2.1 INTRODUCTION

This chapter provides a summary of the state of the law applicable to affirmative action programs of public contracting agencies, as the law has been interpreted and evolved in the federal courts.

In the leading United States Supreme Court cases of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and *Adarand Constructors, Inc. v. Federico Pena*, 115 S. Ct. 2097 (1995), the Supreme Court held that the constitutionality of remedial race-conscious affirmative action programs are subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.¹

Since the *Adarand* decision, seven Federal Court of Appeals decisions have addressed the evidence necessary in a disparity study to support any race-conscious remedies put into place by governmental agencies. See, eg., *Contractors Ass’n. of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), *on remand*, 893 F.Supp. 419 (E.D. Pa. 1995), *aff’d*, 91 F.3d 586 (3d Cir. 1996) (“*Contractors I, II and III*”); *Engineering Contractors of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), *aff’d*, 122 F.3d 895 (11th Cir. 1997); *Concrete Works of Colorado v. City and County of Denver*, 823 F.Supp. 821 (D. Colo. 1993), *rev’d* 321 F.3d 950 (10th Cir. 2003) (“*Concrete Works II*”); *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005) (“*Western States Paving*”); *H.B. Rowe v. Tippet*, 615 F.3d 233 (4th Cir. 2010); *Northern Contracting, Inc. v. State of Illinois*, 473 F.3d 715 (7th Cir. 2007); and *AGC v. Caltrans*, 713 F.3d 1187 (9th Cir. 2013).² These cases and other lower court cases have caused the requirements for race- and gender-conscious programs to evolve since the *Croson* decision.

In general, the requirements for race- or gender-conscious programs include:

- ◆ A race-based remedial program subject to strict judicial scrutiny requires that the government must show a strong basis in the evidence for the compelling governmental interest.
- ◆ Any race-conscious program must be narrowly tailored to remedy the identified compelling governmental interest.
- ◆ Quantitative evidence of discrimination is necessary; anecdotal evidence of discrimination is complementary to statistical evidence of discrimination.
- ◆ A lesser standard, intermediate judicial scrutiny, is applicable when analyzing the constitutionality of gender-based programs. The intermediate judicial scrutiny standard requires that a gender-

CHAPTER SECTIONS



- 2.1 Introduction
- 2.2 Standards of Review for Race- and Gender-Conscious Remedial Programs
- 2.3 Evidence Necessary for Minority, Women, and Disadvantaged Businesses
- 2.4 Burden of Proof
- 2.5 Conclusion

¹ See, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (held that the strict scrutiny standard applies to state and local race-conscious affirmative action programs); and *Adarand Constructors, Inc. v. Federico Pena*, 115 S. Ct. 2097 (1995) (held that the strict scrutiny standard applies to federal affirmative action programs)

² *AGC v. Caltrans* dismissed the challenge to the California DBE on grounds of standing; that is, the AGC did not identify any members who had or would have suffered harm from the Caltrans DBE program. Nevertheless, the case did discuss aspects of the factual predicate justifying race conscious DBE measures.

based remedial program must serve important governmental objectives and be substantially related to the achievement of those objectives.

This chapter analyzes how federal courts have evaluated the constitutionality of race- and gender-conscious programs. Although all federal circuits will be discussed, emphasis will be placed on the decisions of the Ninth Circuit.³

2.2 STANDARDS OF REVIEW FOR RACE- AND GENDER-CONSCIOUS REMEDIAL PROGRAMS

RACE-CONSCIOUS REMEDIAL PROGRAMS

In *Croson*, the United States Supreme Court affirmed that, under the Fourteenth Amendment of the United States Constitution, the proper standard for state and local race-based programs is strict scrutiny.⁴ The governmental entity must show that the racial classification is narrowly tailored to achieve a compelling governmental interest.⁵ The Court held that a state or local governmental entity may create a race-based remedial program to rectify the effects of identified, systemic, past racial discrimination within its jurisdiction.⁶

GENDER-CONSCIOUS REMEDIAL PROGRAMS

In evaluating gender-conscious remedial classifications that operate to the advantage of women, the Supreme Court has used an “intermediate” level of scrutiny which is a less stringent level of review than the strict scrutiny level of review used to analyze race-based classifications. Most “intermediate” level of review cases require the governmental entity to demonstrate an important governmental objective and to develop a program that bears a direct and substantial relation to achieving that objective.⁷ Under the intermediate level of scrutiny, some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. In *Coral Construction Company v. King County* 961 F.2d 910 (9th Cir. 1991), *cert. denied*, 502 U.S. 1033 (1992),⁸ the Ninth Circuit Court of Appeals noted that, “The mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny.”⁹

Although the United States Supreme Court has not ruled directly on the type of scrutiny it would use for a Women-Owned Business Enterprise (WBE) program, the lower federal courts have applied the “intermediate” scrutiny level of review rather than the strict scrutiny applicable to race-conscious

³ The jurisdiction of the Ninth Circuit includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

⁴ *Croson*, 488 U.S. at 493-95.

⁵ *Id.* at 493.

⁶ *Id.* at 509.

⁷ *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Craig v. Boran*, 429 U.S. 190, 211 (1976) (Powell, J. concurring).

⁸ 961 F.2d 910 (9th Cir. 1991), *cert. denied*, 502 U.S. 1033 (1992).

⁹ *Coral Construction v. King County*, 961 F.2d at 932.

programs.¹⁰ However, the Ninth Circuit has ruled that a gender-based remedial program is subject to intermediate scrutiny “supported by an ‘exceedingly persuasive justification’ and substantially related to the achievement of that underlying objective.”¹¹ In the *Engineering Contractors* case, the Eleventh Circuit Court of Appeals recognized that the U.S. Supreme Court’s decision in *United States v. Virginia*, 518 U.S. 515 (1996) may have “signaled” a heightened level of scrutiny by stating that a governmental agency must demonstrate an “exceedingly persuasive justification” for that action. However, the court concluded that, unless and until the United States Supreme Court indicated otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender-conscious program may be upheld as long as it is substantially related to an important governmental objective.¹²

STRICT SCRUTINY, DBE PROGRAMS, AND GOALS-ONLY PROGRAMS

DBE programs, like programs involving express racial classifications, are subject to strict scrutiny. In *W.H. Scott Construction Co., Inc. v. City of Jackson*, 199 F.3d 206 (5th Cir. 1999), the city argued that its disadvantaged-business program was not a racial classification subject to strict scrutiny because (1) it was based upon disadvantage, not race, and (2) it was a goals program, not a quota. The Fifth Circuit disagreed with the claim that the city’s DBE classification was not based on race, because the city acted under the federal Section 8(d), which grants a rebuttable presumption of social and economic disadvantage to firms owned by minorities.¹³ Such a presumption is subject to strict scrutiny. The Fifth Circuit also found that it was irrelevant whether the program established “goals” or “quotas,” since “they can and surely will result in individuals being granted a preference because of their race.”¹⁴ Further, the Eleventh Circuit has held that “strict scrutiny applies to *all* racial classifications, not just those creating binding racial preferences.”¹⁵ Thus, a goals-only program must still meet the strict scrutiny standard.

2.3 EVIDENCE NECESSARY FOR MINORITY, WOMEN, AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

In 1999, the USDOT revised its DBE program regulations in response to the *Adarand* Supreme Court decision which established “narrow tailoring” requirements. The District Court in the *Adarand* case had held that the prior federal regulations were not narrowly tailored for various reasons.¹⁶

¹⁰ See, e.g., *Concrete Works II*, 321 F.3d 950 (10th Cir. 2003); *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991); *Philadelphia*, 91 F.3d 586 (3^d Cir. 1996); *Engineering Contractors Association of South Florida, Inc., et. al. v. Metropolitan Dade County, et. al.*, (“*Engineering Contractors*”), 122 F.3d 895 (11th Cir. 1997).

¹¹ *AGC v. California*, 713 F.3d 1187, 1195 (9th Cir. 2013). *United States v. Virginia Military Institute*, 518 U.S. 515 (1996); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982); *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987); *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987).

¹² *Engineering Contractors*, 122 F.3d at 908 (11th Cir. 1997).

¹³ *W.H. Scott Construction Co., Inc. v. City of Jackson* 199 F.3d at 215-17 (5th Cir. 1999).

¹⁴ *Id.* at 215 (quoting *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 350 (D.C.Cir. 1998)).

¹⁵ *Virdi v. DeKalb Cnty. School Dist.*, 135 Fed.Appx. 262, 267 (11th Cir. 2005) (emphasis in original).

¹⁶ For example, the district court held that the DBE regulations were over-inclusive and under-inclusive, i.e., they caused presumptions of disadvantage for groups of individuals who were not disadvantaged, and they excluded groups of individuals who were disadvantaged.

In response to modifications to the federal DBE regulations in *Adarand v. Slater*,¹⁷ the Tenth Circuit Court of Appeals upheld the modified federal regulations. The court held that Congress had demonstrated a compelling interest that required the DBE program.

The court further held that the government showed two barriers that demonstrated a link between the use of public funds for construction contracts and the channeling of those funds due to private discrimination. Those barriers included: 1.) evidence of behaviors by prime contractors, unions, lenders, and bonding companies that negatively impacted business formation by minorities and women in construction; and, 2.) informal, racially exclusionary business networks that dominated the subcontracting construction industry negatively impacting the ability of DBE construction firms to obtain contracts.

This created barriers to fair competition between minority and non-minority subcontractors.¹⁸ These business networks were exemplified by long-standing relationships between contractors and majority subcontractors. The court noted that, while this evidence was not completely dispositive, it strongly supported the government’s claim that there are significant barriers to minority competition in the public subcontracting market, raising the specter of racial discrimination.¹⁹

In *Western States Paving Co. v. Washington State Department of Transportation*, the Ninth Circuit Court of Appeals agreed that, “[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21’s enactment, Congress had a strong basis in evidence for concluding that—in at least some parts of the country—discrimination within the transportation contracting industry hinders minorities’ ability to compete for federally funded contracts.”²⁰ By stating that Congress had a strong basis to conclude that in at least some parts of the country discrimination within the transportation contracting industry exists, the *Western States Paving* decision left open the question of whether it exists in specific state and local governments of the Ninth Circuit. Therefore, it is necessary to show that discrimination in the transportation industry in the Alaska market exists. In addition, the Ninth Circuit in *Western States Paving* stated that both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination.

Once the government has shown a compelling governmental interest, it must show that its program is narrowly tailored to remedy that interest. The Ninth Circuit noted that the Supreme Court has identified several factors that are relevant in determining whether a racial classification is narrowly tailored: “the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the numerical goals to the relevant labor market; and the impact of the relief on the rights of third parties.”²¹

¹⁷ 228 F.3d 1147 (10th Cir. 2000), *cert. dismissed*, *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) (*per curiam*).

¹⁸ *Adarand v. Slater* at 1167-1168.

¹⁹ *Id.* at 1174.

²⁰ 407 F.3d 983 (9th Cir. 2005).

²¹ *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)).

2.4 BURDEN OF PROOF

The *Croson* decision imposes the original burden of proof upon the government to demonstrate that a challenged DBE program is supported by documented evidence of past discrimination and/or current discrimination. The plaintiff then has the burden to prove that the DBE program is unconstitutional through various methods such as flawed methodology used by the government to show that past and/or present discrimination exists, the race-neutral reasons for the disparity, or the existence of controverting data.²²

WESTERN STATES PAVING CONCLUSIONS

In *Western States Paving*, the constitutionality of the requirement that contractors use race and gender-based criteria when awarding sub-contracts was challenged both “on its face” and “as applied.” A program can be constitutional “on its face” when it is unconstitutional in all circumstances of its application. The court in *Western States Paving* found that the federal DBE regulations and their authorizing statute in TEA-21 were constitutional, and therefore, the federal DBE program is constitutional “on its face.” For example, as the court held in *Western States Paving*, the U.S. Congress could find that discrimination exists across the country and therefore, there is a compelling need for the program. The court also found that the federal DBE regulations were narrowly tailored for the national contracting industry.

On the other hand, a program can be constitutional “on its face” but unconstitutional “as applied” in a particular case. For example, while discrimination exists across the country, it may not exist in the jurisdiction that has the race- and gender-based case.

The Ninth Circuit Court of Appeals in *Western States Paving* held that the state of Washington failed to prove that there was adequate evidence of discrimination within the state’s contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored. The Ninth Circuit in *Western States* established a two-prong test: (1) the agency must establish the presence of discrimination in its own transportation industry, and (2) the affirmative action program must be “limited to those groups that have actually suffered discrimination.”²³ The Court discussed several ways in which the state’s evidence was insufficient:

- ◆ The state had not conducted a valid statistical study to establish the existence of discrimination in the highway contracting industry;
- ◆ The Washington State Department of Transportation’s (WSDOT) calculation of the capacity of DBEs to do work was flawed because it failed to account for the effects of past race- conscious programs on current DBE participation;
- ◆ The disparity between DBE participation on contracts with and without affirmative action components did not provide any evidence of discrimination;

²² See, e.g., *Concrete Works v. Denver*, 321 F.3d 950, 959 (10th Cir 2033) (“The ultimate burden remains with the [plaintiff] to demonstrate the unconstitutionality of an affirmative-action program.” (citing *Wygant v. Jackson*, 476 U.S. 267, at 277-78 (1986))).

²³ *Western States Paving*, 407 F.3d at 997-99. This two-prong test was re-affirmed in *AGC v. Caltrans*, 713 F.3d 1187, 1196 (9th Cir. 2013).

- ♦ A small disparity between the proportion of DBE firms in the state and the percentage of funds awarded to DBEs in race-neutral contracts (2.7% in the case of WSDOT) was entitled to little weight as evidence of discrimination, because it did not account for other factors that may affect the relative capacity of DBEs to undertake contracting work;
- ♦ This small statistical disparity was not enough, standing alone, to demonstrate the existence of discrimination. To demonstrate discrimination, a larger disparity would be required;
- ♦ WSDOT did not present any anecdotal evidence of discrimination; and
- ♦ The affidavits required by 49 CFR 26.67(a), in which DBEs certify that they are socially and economically disadvantaged, did not constitute evidence of the presence of discrimination.

Consequently, the court found that the WSDOT DBE program was unconstitutional “as applied.”²⁴

RACE-NEUTRAL REMEDIES

The *Western States Paving* case noted that, although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, “it does require serious, good faith consideration of workable race-neutral alternatives.” *Grutter v. Bollinger*, 539 U.S. 306, 339, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003); also see *Adarand III*, 515 U.S. at 237-38 (when undertaking narrow tailoring analysis, courts must inquire “whether there was any consideration of the use of race-neutral means to increase minority business participation in government contracting” (internal quotation marks omitted)).

TEA-21 DBE regulations place a preference on the use of race-neutral means, including informational and instructional programs targeted toward all small businesses, to achieve a government’s DBE utilization goal. The regulations require a state to “meet the maximum feasible portion of [its] overall goal by using race-neutral means.” 49 C.F.R. § 26.51(a). Only when race-neutral efforts prove inadequate do the regulations authorize a state to resort to race-conscious measures to achieve the remainder of its DBE utilization goal. *Western States Paving* recognized “[w]e therefore are dealing here with [regulations] that emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized.”²⁵ However, the Ninth Circuit in *Western States Paving* and *AGC v. Caltrans* held that states are not required “to independently meet this aspect of narrow tailoring...”²⁶ That is, states are not required to first actually implement race-neutral programs and evaluate their success prior to implementing race-conscious programs. States must consider race-neutral programs without implementing them.

FLEXIBILITY

Western States Paving also emphasizes the need for flexibility to show narrow tailoring in the DBE program. The court noted that a quota system is the hallmark of an inflexible affirmative action program. The court quoted *Grutter* stating that “[w]hile [q]uotas impose a fixed number or percentage which must be attained, or which cannot be exceeded, a permissible goal requires only a good-faith effort to come within a range demarcated by the goal itself.”²⁷ The court recognized that the TEA-21 DBE regulations

²⁴ *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)).

²⁵ *Id.* at 994 (citing *Adarand VII*, 228 F.3d at 1179).

²⁶ *AGC v. Caltrans*, No. 11-16228, at 23; *Western States Paving*, 407 F.3d at 995, 997-98.

²⁷ 539 U.S. 306.

explicitly prohibit the use of quotas.²⁸ Moreover, where race-conscious contracting goals are used, prime contractors can meet that goal either by subcontracting the requisite amount of work to DBEs or by demonstrating good faith efforts to do so.²⁹ A recipient of federal funds, likewise, cannot be penalized by the federal government for failing to attain its DBE utilization goal as long as it undertakes good faith compliance efforts.³⁰ TEA-21 therefore provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.³¹

TIME LIMITATIONS FOR A RACE-CONSCIOUS PROGRAM

The Western States Paving Court noted that a narrowly tailored remedial program must also include adequate durational limitations. The Court noted that TEA-21 comports with this requirement because it is subject to periodic reauthorization by Congress. The debates concerning reauthorization ensure that Congress regularly evaluates whether a compelling interest continues to justify TEA-21's minority preference program. Other cases have noted that time limitations are required for DBE/MBE/WBE programs (states may terminate their programs if they meet their annual overall goal through race-neutral means for two consecutive years).³²

RELEVANT MARKET

To be narrowly tailored, a minority preference program must establish utilization goals that bear a close relationship to minority firms' availability in a particular market. In *Croson* for example, one of the constitutional shortcomings that the court identified in the Richmond program was the city's use of the proportion of minorities in the local population to establish the 30 percent quota.³³ The court explained that this numerical goal "rest[ed] upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population."³⁴

The TEA-21 DBE regulations avoid this pitfall. The regulations do not establish a mandatory nationwide for minority participation in transportation contracting. The regulations clarify that the 10 percent DBE utilization goal found in the TEA-21 statute is "aspirational" only, and that states are neither required, nor authorized, to set their own DBE/MBE/WBE goals at 10 percent by simply relying upon the statute.³⁵

READY, WILLING, AND ABLE DBES

The TEA-21 regulations provide for each state to establish a DBE utilization goal that is based upon the proportion of ready, willing, and able DBEs in the state's transportation contracting industry.³⁶ This

²⁸ 49 C.F.R. § 26.43(a).

²⁹ *Id.* § 26.53(a).

³⁰ *Id.* § 26.47(a).

³¹ *Grutter v. Bollinger*, 539 U.S. 982 (2003). See also *Sherbrooke Turf, Inc.*, 345 F.3d at 972 ("the [TEA-21] DBE program has substantial flexibility").

³² See, e.g., *Sherbrooke and Gross Seed*, 345 F.3d 964 (2003).

³³ *Croson*, 488 U.S. at 729-730.

³⁴ *Western States Paving*, 407 F.3d at 995.

³⁵ *Western States Paving*, 407 F.3d at 994. Although the court did not note this, DBE goals may actually increase opportunities for non-DBEs by encouraging subcontracting, and the opportunity for non-DBEs subcontractors to bid, in situations where primes would otherwise self-perform.

³⁶ 64 Fed. Reg. 21 (February 2, 1999).

provision ensures that each state sets a minority utilization goal that reflects the realities of its own labor market.

Implementation of the race-conscious contracting goals which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although goals can place a burden on non-DBE firms, the Ninth Circuit held that this fact alone does not invalidate TEA-21. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.³⁷

RELATIONSHIP OF GOALS TO AVAILABILITY

Narrow tailoring requires consistency between remedial goals and measured availability. Merely setting percentages without a basis in statistical evidence, as the City of Richmond did in *Croson*, has strongly influenced decisions finding programs unconstitutional.³⁸

By contrast, the Eighth, Ninth, and Tenth Circuits have approved the goal-setting process for the federal DBE program, as revised in 1999, and these decisions are instructive when considering whether any race-conscious preference program is narrowly tailored.³⁹ The DBE regulations require goals based on one of several methods for measuring DBE availability.⁴⁰ The Eighth Circuit noted that the “DOT has tied the goals for DBE participation to the relevant labor markets,” insofar as the regulations “require grantee States to set overall goals based upon the likely number of minority contractors that would have received federally assisted highway contracts but for the effects of past discrimination.”⁴¹ The Eighth Circuit acknowledged that goal setting was inexact but also stated:

The exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. This stands in stark contrast to the program struck down in *Croson*, which rested upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population.⁴²

Moreover, the approved DBE regulations use built-in mechanisms to ensure that DBE goals are not set excessively high relative to DBE availability. For example, the approved DBE goals are to be set aside if the overall goal has been met for two consecutive years by race-neutral means.⁴³ The approved DBE contract goals also must be reduced if overall goals have been exceeded with race-conscious means for two consecutive years.⁴⁴ The Eighth Circuit has found these provisions to be evidence of narrow tailoring,

³⁷ *Western States Paving*, 407 F.3d at 995.

³⁸ See, e.g., *Builders Ass’n of Greater Chicago*, 256 F.3d at 647; *Kohlbeck v. Omaha*, 447 F.3d 552, 556 (8th Cir. 2006).

³⁹ *Adarand v. Slater*, 228 F.3d at 1182; *Sherbrooke Turf*, 345 F.3d at 972; *W. States Paving*, 407 F.3d at 995.

⁴⁰ 49 C.F.R. § 26.45.

⁴¹ *Sherbrooke Turf*, 345 F.3d at 972 (citing 49 C.F.R. § 26.45(c)-(d) (Steps 1 and 2)).

⁴² *Id.* at 972 (citing *Croson*, 488 U.S. at 507).

⁴³ 49 C.F.R. § 26.51(f)(3).

⁴⁴ 49 C.F.R. § 26.51(f)(4).

particularly when the provisions are implemented according to local disparity studies that carefully calculate the applicable goals.⁴⁵

BURDEN ON THIRD PARTIES

Narrow tailoring also requires minimizing the burden of the program on third parties. The Eighth Circuit stated the following with respect to the federal DBE program:

Congress and DOT have taken significant steps to minimize the race-based nature of the DBE program. Its benefits are directed at all small businesses owned and controlled by the socially and economically disadvantaged. While TEA-21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.⁴⁶

Waivers and good-faith compliance are also tools that serve this purpose of reducing the burden on third parties.⁴⁷ The DOT DBE regulations have also sought to reduce the program burden on non-DBEs by avoiding DBE concentration in certain specialty areas.⁴⁸ These features have gained the approval of the circuit court in *Adarand* which discussed them at length as measures of lowering impact on third parties.⁴⁹

EVIDENTIARY FRAMEWORK

Discriminatory Evidence - *Croson* established that a governmental entity must demonstrate identified, systemic discrimination based on race.⁵⁰ Mere statistics and broad assertions of societal discrimination will not support a race- or gender-conscious remedial program. The governmental agency must demonstrate a pattern of such discrimination in the relevant market area to establish adequate evidence of discrimination.⁵¹ The evidence must cover each racial group to whom a remedy would apply.⁵²

In *Northern Contracting, Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7th Cir. 2007), the Seventh Circuit Court of Appeals held that relative available DBE/MBE/WBE firms are those that are “ready, willing and able to participate on DOT contracts” and it accepted use of custom census data vs. simply using prequalified DBE firms.⁵³ The court noted that the federal regulations gave no indication that DOT intended to narrow ready, willing, and able firms to prequalified firms. In *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), the Tenth Circuit recognized that disparity studies

⁴⁵ *Sherbrooke Turf*, 345 F.3d at 973-974.

⁴⁶ *See Grutter*, 539 U.S. at 339-41; *Gratz v. Bollinger*, 539 U.S. 244 (2003).

⁴⁷ 49 C.F.R. § 26.53.

⁴⁸ 49 C.F.R. § 26.33.

⁴⁹ *Adarand v. Slater*, 228 F.3d at 1182.

⁵⁰ *Croson*, 488 U.S. at 469.

⁵¹ *Croson*, 488 U.S. at 509.

⁵² *id.* at 506.

⁵³ *id.* at 723.

must only determine whether the firms are capable of “undertak[ing] prime or subcontracting work in public construction projects.”⁵⁴

There are several ways to establish the necessary evidence to support a race- or gender-conscious remedial program. The first and most important type of evidence is a statistically significant disparity between the number of available contractors ready, willing, and able to perform a particular service and the number utilized by the governmental entity or the entity’s prime contractors. The second type of evidence is evidence of a pattern of individual discriminatory acts that are supported by appropriate statistical proof.⁵⁵ The third type of evidence, which was required by the Ninth Circuit Court of Appeals in *Coral Construction*, includes both statistical and anecdotal evidence. The court noted that anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁵⁶ The court recognized that the anecdotal evidence provided in *Coral Construction* was considerably more than that provided by the Richmond City Council in *Croson*, including convincing affidavits of 57 minority and female contractors.⁵⁷

Availability Analysis - To perform a proper disparity analysis, the government must determine “availability,” or the number of qualified minority contractors willing and able to perform a particular service for the municipality. In *Croson*, the Court stated, “[w]here there is a significant statistical disparity between the number of qualified minority contractors *willing and able* to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”⁵⁸

An accurate determination of availability also permits the government to meet the requirement that it “determine the precise scope of the injury it seeks to remedy” by its program.⁵⁹ Following *Croson*’s guidance on availability, lower courts have considered how legislative bodies may determine the scope of the injury sought to be remedied by an MBE program. Federal courts have not prescribed precisely what data sources or techniques must be used to measure M/WBE⁶⁰ availability. However, courts have rejected studies where the methods used to measure availability were considered insufficient. For instance, in *W.H. Scott Construction Co.*, the Fifth Circuit rejected a study that “was restricted to the letting of prime contracts by the City under the City’s Program; [and which] did not include an analysis of the availability

⁵⁴ *Id.* at 984. The Tenth Circuit Court of Appeals accepted the argument that the minority-owned firm’s size is a result of discrimination instead of an indication of its qualifications, willingness, or ability to perform construction services. The court also rejected the concept that a minority-owned firm must be capable of performing a particular contract, but instead must only be capable of performing city construction contracts.

⁵⁵ *Croson*, 488 U.S. at 509.

⁵⁶ *Coral Construction*, 941 F.2d at 919.

⁵⁷ *Coral Construction*, 941 F.2d at 917-18. See also, *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991) (Anecdotal evidence *Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991)), (Anecdotal evidence included evidence that MBEs were denied contracts even though they were the low bidders; MBEs were told that they were not qualified when later they were found to be qualified; MBEs were refused work even when they had been awarded the contract as a low bidder; and MBEs were harassed by City personnel to discourage them from bidding on City contracts).

⁵⁸ 488 U.S. at 509 (emphasis added).

⁵⁹ *Id.* at 498.

⁶⁰ M/WBE or, Minority or Women Owned Business here is defined as 51% owned by someone classified as a minority or woman. This is the standard disparity study industry definition.

and utilization of qualified minority subcontractors, the relevant statistical pool, in the City's construction projects."⁶¹

Courts have permitted the use of census data to measure availability. Census data has the benefit of being accessible, comprehensive, and objective in measuring availability. In *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, the Third Circuit acknowledged some of the limitations of census data, but nonetheless stated that such data could appropriately be used in disparity studies.⁶² In that case, the city's consultant calculated a disparity using data showing the total amount of contract dollars awarded by the city, the amount that went to MBEs, and the number of African American construction firms. The consultant combined this data with data from the Census Bureau on the number of construction firms in the Philadelphia Standard Metropolitan Statistical Area.⁶³ Although the Third Circuit declined to rule on the compelling interest prong, the court's discussion of the data sources indicated that it may be inclined to accept such data sources.⁶⁴

Another potential data source that could be used to determine minority firm availability is the agency's bidder data.⁶⁵ However, as pointed out in the National Cooperative Highway Research Program's Report 644, the bidder list approach has several drawbacks, including the fact that minority firms are likely to be underrepresented in such lists because of current and past discrimination.⁶⁶ Further, *Croson* does not require the use of bidder data to determine availability.⁶⁷ In *Concrete Works IV*, in the context of plaintiff's complaint that the City of Denver had not used such information, the Tenth Circuit rejected the plaintiff's claim that the availability data was unreliable because it was not based on the city's bidder data.⁶⁸ As the court noted, the usefulness of bid information is limited, since some firms that bid may not be qualified or able to undertake agency contracts, whereas other firms that do not bid may be qualified and able to do so.⁶⁹

Narrow Tailoring and Over-Inclusion - The Ninth Circuit in *Western States Paving* agreed with the *Sherbrooke* and *Gross Seed* cases that it is necessary to undertake an as applied inquiry into whether a government's DBE program is narrowly tailored. The *Western States Paving* court stated that even when discrimination is present within a state, a remedial program is only narrowly tailored if its application is limited to those minority groups that have actually suffered discrimination. In *Croson*, for example, one of the rationales upon which the Supreme Court relied to invalidate the city's quota system was the program's expansive definition of "[m]inority group members," which encompassed "[c]itizens of the United States who are Blacks, Spanish-speaking, Orientals, Indians, Eskimos and Aleuts."⁷⁰ The Court

⁶¹ 199 F.3d at 218.

⁶² 91 F.3d at 605.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ George LaNoue, *Who Counts? Determining the Availability of Minority Businesses for Contracting After Croson*, 21 HARV. J. L. AND PUB. POL. 793, 833 (1998).

⁶⁶ Jon Wainright and Colette Holt, *National Cooperative Highway Research Program: Report 644: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* (2010).

⁶⁷ 488 U.S. at 502.

⁶⁸ 321 F.3d at 983-84.

⁶⁹ *Id.* at 983-84

⁷⁰ 488 U.S. at 478, 109 S.Ct. 706 (second alteration in original).

admonished that the random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggested that perhaps the city's purpose was not in fact to remedy past discrimination.

The Ninth Circuit Court of Appeals noted that it had previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination. In *Monterey Mechanical Co. v. Wilson*, 125 F.3d at 704, the Ninth Circuit relied upon *Croson* to invalidate a California statute that required prime contractors on public projects to subcontract 15 percent of the work to minority-owned businesses and 5 percent to woman-owned businesses. The statute defined the term "minority" to include Blacks, Hispanics, Native Americans, Pacific-Asians, Asian-Indians, and over two-dozen subgroups.⁷¹ The court concluded that the statute was not narrowly tailored because it provided race-based preferences to "groups highly unlikely to have been discriminated against in the California construction industry."⁷² The overly inclusive designation of benefited minority groups was a "red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored."⁷³ The court also cited *Builders Ass'n of Greater Chicago v. County of Cook*, 256 F.3d 642, 647 (7th Cir.2001), holding that an ordinance that established minimum levels of minority participation in county construction contracts was not narrowly tailored because it afforded preferences to a "laundry list" of minorities, not all of whom had suffered discrimination; *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 737 (6th Cir. 2000), invalidating a state statute that set aside 5 percent of state construction contracts for "Blacks, American Indians, Hispanics, and Orientals" because "[b]y lumping together [these] groups, ... the [program] may well provide preference where there has been no discrimination, and may not provide relief to groups where discrimination might have been proven;" *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C.Cir.1992) "the random inclusion of racial groups for which there is no evidence of past discrimination in the construction industry raises doubts about the remedial nature of [a minority set-aside] program" (internal quotation marks omitted). In contrast, the Caltrans DBE program litigated in *AGC v. Caltrans* had excluded Hispanic-owned firms from race-based preferences based on inadequate factual predicate evidence for the Hispanic ethnic category.⁷⁴

Accordingly, each of the principal minority groups benefiting from the state's DBE program must have suffered discrimination within the state. If that is not the case, then the DBE program provides minorities who have not encountered discriminatory barriers with an unconstitutional competitive advantage at the expense of both non-minorities and any minority groups that have actually been targeted for discrimination.

DBE Goal Setting and Capacity - The Ninth Circuit also noted that Washington's DBE program closely tracked the sample DBE program developed by the USDOT. In setting its DBE goal for the year 2000, the WSDOT first calculated the relative availability of ready, willing, and able DBEs in the State. It did so by dividing the number of transportation contracting firms in the Washington State Office of Minority,

⁷¹ *Id.* at 714, 109 S.Ct. 706.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *AGC v. Caltrans*, No. 11-16228, at 4.

Women, and Disadvantaged Business Enterprises Directory by the total number of transportation contracting firms listed in the Census Bureau's Washington database. This calculation yielded a figure of 11.17 percent, which represented the baseline availability of DBEs.

The WSDOT then adjusted this figure to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs on state projects between 1994 and 1998. The WSDOT determined that an upward adjustment was necessary to account for capacity because DBEs had performed approximately 18 percent of the work on state projects during that period. No adjustment was made, however, to account for discriminatory barriers in obtaining bonding and financing. The WSDOT likewise did not make any adjustment to its base figure to reflect the effects of past or present discrimination because it lacked any statistical studies evidencing such discrimination. On the basis of the upward adjustment for capacity, the WSDOT arrived at a final DBE utilization goal of 14 percent. The WSDOT then sought to ascertain the proportion of this goal that could be achieved through race-neutral means. In making that determination, it relied upon the 9 percent DBE participation rate on state-funded contracts which did not include affirmative action components. The WSDOT accordingly reasoned that it would need to achieve 5 percent of its 14 percent DBE utilization goal through race-conscious means. The USDOT approved the WSDOT's goal-setting methodology and the totality of its 2000 DBE program. The Ninth Circuit concluded, however, that the information relied upon by WSDOT was inadequate and that a disparity study was necessary. The court referred to WSDOT's adjustments as oversimplified and held that it had not properly adjusted its availability pool of DBEs to those ready, willing, and able in its jurisdiction.

WSDOT's statistical evidence had not accounted for factors that may affect the relative capacity of DBEs to undertake contracting work. The court noted that the fact that DBEs constituted 11.17 percent of the Washington market did not establish that they were able to perform 11.17 percent of the work.⁷⁵ The court discussed that DBE firms may be smaller and less experienced than non-DBE firms, especially if they are new businesses started by recent immigrants, or they may be concentrated in certain geographic areas of the state, rendering them unavailable for a disproportionate amount of work (see *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir.1991) "Statistical evidence often does not fully account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral."; *Associated Gen. Contractors of Ohio, Inc.*, 214 F.3d at 736 "If [minority-owned firms] comprise 10 percent of the total number of contracting firms in the state, but only get 3 percent of the dollar value of certain contracts, that does not alone show discrimination, or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have the resources to complete."; *O'Donnell Constr. Co.*, 963 F.2d at 426 holding that the small proportion of D.C. public contracts awarded to minority-owned firms did not establish discrimination because "[m]inority firms may not have bid on ... construction contracts because they were generally small companies incapable of taking on large projects; or they may have been fully occupied on other projects; or the District's contracts may not have been as lucrative as others available in the Washington metropolitan area; or they may not have had the expertise needed to perform the contracts; or they may have bid but were rejected because others came in with a lower price."). The court held that

⁷⁵ See *Md. Troopers Ass'n v. Evans*, 993 F.2d 1072, 1077 (4th Cir.1993) ("Inferring past discrimination from statistics alone assumes the most dubious of conclusions: that the true measure of racial equality is always to be found in numeric proportionality.").

WSDOT's statistical evidence had not controlled for any of these factors and, after controlling for those factors, there must exist a statistically significant disparity between the minority-owned firms ready, willing, and able to do the work and those selected to do the work. In contrast, the factual predicate evidence in *AGC v. Caltrans* included information on capacity, although the case did not review this capacity evidence in any detail.⁷⁶

Anecdotal Evidence - The court also recognized that this statistical evidence produced by WSDOT was not supported by sufficient anecdotal evidence. WSDOT did have the DBE affidavits required by 49 CFR 26.67(a) attesting to the social and economic disadvantage of the DBE owners, but the Ninth Circuit ruled that those affidavits spoke to general societal discrimination and not discrimination within the transportation construction industry in the state of Washington.

In *H.B. Rowe*, evidence from telephone surveys, interviews, and focus groups was presented in the factual predicate study. The Fourth Circuit also favorably cited survey evidence of a good ol' boy network excluding MBEs from work, double standards in qualifications, primes viewing MBEs as less qualified, dropping MBEs after contract award, and firms changing their behavior when not required to use MBEs. This material was affirmed in interviews and focus groups. The Fourth Circuit also seemed to give some weight to the differences in responses between ethnic/gender groups regarding the aforementioned barriers. The Fourth Circuit concluded that, "The survey in the 2004 study exposed an informal, racially exclusive network that systematically disadvantaged minority subcontractors."⁷⁷

In *H.B. Rowe*, the plaintiff argued that these data were not verified, to which the Fourth Circuit responded, "a fact finder could very well conclude that anecdotal evidence need not—and indeed cannot—be verified because it "is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions."⁷⁸ The Fourth Circuit also commented favorably on the North Carolina Department of Transportation (NCDOT) study survey oversampling M/WBEs as long as the sample was random. The Fourth Circuit did state, citing precedent in *Maryland Troopers*, that it was problematic to infer "discrimination from reports of cronyism absent evidence of racial animus."⁷⁹

The Ninth Circuit in *AGC v. Caltrans* affirmed several aspects of the review of anecdotal material in *Rowe* in offering several points about relevant anecdotal evidence:

- ◆ Anecdotal evidence does not have to be verified;⁸⁰
- ◆ The agency does not need specific incidents of discrimination;⁸¹
- ◆ It is only necessary that the anecdotal evidence support the statistical evidence showing a "pervasive pattern of discrimination";⁸² and

⁷⁶ *AGC v. Caltrans*, No. 11-16228, at 18.

⁷⁷ *H.B. Rowe*, 615 F.3d 233, at 251.

⁷⁸ *Id.* at 249 (quoting *Concrete Works*, 321 F.3d at 989).

⁷⁹ *Id.* at 251 (citing *Maryland Troopers*).

⁸⁰ *AGC v. Caltrans*, No. 11-16228, at 20 (citing *H.B. Rowe*, 615 F.3d at 249 and *Concrete Works*, 321 F.3d 970, 989 (10th Cir. 2003)).

⁸¹ *AGC v. Caltrans*, No. 11-16228, at 18-19 (citing *AGC v. Coalition for Economic Equity*, 950 F.2d 1401, 1416, n.11 (9th Cir. 1991)).

⁸² *AGC v. Caltrans*, No. 11-16228, at 21 (citing *AGC v. Coalition for Economic Equity*, 950 F.2d 1401, 1414 (9th Cir. 1991)).

- ♦ Evidence of difficulties of breaking into a “good ol’ boy network” is relevant anecdotal evidence of barriers faced by minority and disadvantaged firms.⁸³

Active or Passive Participation - *Croson* requires that the governmental agency implementing a DBE program must have either actively or passively participated in the discrimination.⁸⁴ However, *Concrete Works* held that a court does not have to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination.⁸⁵ An entity is an active participant if the evidence shows that it has created barriers that actively exclude DBEs from contracting opportunities. An entity is a passive participant in a private system of discrimination where it provides tax dollars into that discriminatory industry.⁸⁶

Post-enactment Evidence - Post-enactment evidence is evidence produced by an agency after a race-conscious program has been established. The Supreme Court in *Croson* did not address the issue of whether post-enactment evidence could be used to justify a DBE program. However, since the *Croson* decision, numerous cases have found post-enactment evidence of discrimination sufficient to justify implementation of a DBE program.⁸⁷ The Ninth Circuit required both pre-enactment and post-enactment evidence in *Coral Construction v. King County*, 941 F.2d 910 (9th Cir. 1991).

Since that case, two district courts have rejected the use of post-enactment evidence in the evaluation of minority business programs.⁸⁸ A federal circuit court decision, covering the federal small disadvantaged business enterprise program, stated that, “For evidence to be relevant in a strict scrutiny analysis of the constitutionality of a statute, it must be proven to have been before Congress prior to enactment of the racial classification.”⁸⁹ *AGC v. Caltrans* did not directly address the issue of post-enactment evidence.

Geographic Market - The Ninth Circuit Court of Appeals clarified in *Coral Construction* that a DBE (or MBE) program must limit its geographical scope to the boundaries of the enacting jurisdiction.⁹⁰

The Supreme Court has not specifically established how the relevant market area should be defined, but some circuit courts have done so, including the Tenth Circuit in *Concrete Works II*.⁹¹ In that case, a non-M/WBE construction company argued that, under *Croson*, Denver’s affirmative action program could only rely on data from within the City and County of Denver—not from the larger six-county Denver Metropolitan Statistical Area (MSA). The Tenth Circuit disagreed, holding “[t]he relevant area in which to measure discrimination, then, is the local construction market, but that is not necessarily confined by

⁸³ *AGC v. Caltrans*, No. 11-16228, at 20 (citing *Western States Paving*, 407 F.3d at 992).

⁸⁴ *Ibid.*

⁸⁵ *Concrete Works*, 36 F.3d at 1522. The Tenth Circuit held that the City correctly showed that it indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against M/WBE subcontractors in other private portions of their business. However, most courts have required active or passive participation in the discrimination.

⁸⁶ *Croson*, 488 U.S. at 492.

⁸⁷ See, e.g., *Engineering Contractors v. Dade County*, 122 F.3d 895, 911 (11th Cir. 1997); *Contractors Association v. Philadelphia*, 6 F.3d 990 (2d Cir. 1993); *Concrete Works*, 36 F.3d 1513 (10th Cir. 1994).

⁸⁸ *Associated Utility Contractors v. Baltimore*, 83 F.Supp.2d 613 (D. Md. 2000); *West Tenn. ABC v. Memphis City Schools*, 64 F.Supp.2d 714 (W.D. Tenn. 1999).

⁸⁹ *Rothe v. U.S. Dept. of Defense*, 413 F.3d 1327, 1328 (Fed Cir 2005).

⁹⁰ *Coral Construction*, 941 F.2d at 925.

⁹¹ *Concrete Works of Colorado, Inc. v. City and Cnty. of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994).

jurisdictional boundaries.”⁹² The court further stated that “[i]t is important that the pertinent data closely relate to the jurisdictional area of the municipality whose program we scrutinize, but here Denver’s contracting activity, insofar as construction work is concerned, is closely related to the Denver MSA.”⁹³ Because more than 80 percent of Denver Department of Public Works construction and design contracts were awarded to firms located within the Denver MSA, the Tenth Circuit held that the appropriate market area was the Denver MSA, not the City and County of Denver alone.⁹⁴ Accordingly, data from the Denver MSA was “adequately particularized for strict scrutiny purposes.”⁹⁵

Relevant Time Frame for Analysis - It is not clear how many years must be reviewed in a disparity study. One court has held that two years is inadequate.⁹⁶ Another court has held that it was acceptable to study only one year.⁹⁷ The *Croson* case, however, indicated that it may be a fatal flaw to rely on outdated evidence.⁹⁸ One district court in the Northern District of California held that the most telling statistics may be an analysis of the evidence before there were any DBE (or M/WBE) programs, compared with the evidence once the programs were implemented.⁹⁹ There is no specific legal rule, however, on what time period is proper.

Statistical Significance - While courts have indicated that anecdotal evidence may suffice without statistical evidence, no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate professional standards.¹⁰⁰ The Eleventh Circuit has addressed the role of statistical significance in assessing levels of disparity in public contracting. Generally, disparity indices of 80 percent or higher—indicating close to full participation—are not considered significant.¹⁰¹ The court referenced the Equal Employment Opportunity Commission’s disparate impact guidelines, which establish the 80 percent test as the threshold for determining a *prima facie* case of discrimination.¹⁰² According to the Eleventh Circuit, no circuit that has explicitly endorsed using disparity indices has held that an index of 80 percent or greater is probative of discrimination, but they have held that indices below 80 percent indicate “significant disparities.”¹⁰³

In support of the use of standard deviation analyses to test the statistical significance of disparity indices, the Eleventh Circuit observed that “[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Phillips & Jordan v. Watts*, 13 F.Supp. 1308, 1315 (N.D. Fla. 1998).

⁹⁷ *AGCC v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401, 1414 (9th Cir. 1991).

⁹⁸ *Croson*, 488 U.S. at 499.

⁹⁹ *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*, No. C92-2938 (N.D. Cal. Sept. 181992); *accord*, *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003).

¹⁰⁰ See *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599-601.

¹⁰¹ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914.

¹⁰² *Id.* at 914 (citing 29 C.F.R. § 1607.4D (concerning the disparate impact guidelines and threshold used in employment cases)).

¹⁰³ *Id.* at 914 (citing *Contrs. Ass’n of E. Pennsylvania, Inc.*, 6 F.3d at 1005 (crediting disparity index of 4 percent) and *Concrete Works II*, 36 F.3d at 1524 (crediting disparity indices ranging from 0 percent to 3.8 percent)).

random and the deviation must be accounted for by some factor other than chance.”¹⁰⁴ With standard deviation analyses, the reviewer can determine whether the disparities are substantial or statistically significant, lending further statistical support to a finding of discrimination. On the other hand, if such analyses can account for the apparent disparity, the study will have little if any weight as evidence of discrimination.

Further, the interpretations of the studies must not assume discrimination has caused the disparities, but must account for alternative explanations of the statistical patterns.¹⁰⁵ The Third and Fifth Circuits have also indicated that statistics about prime contracting disparity have little, if any, weight when the eventual M/WBE program offers its remedies solely to subcontractors.¹⁰⁶ In *Engineering Contractors* there was a separate analysis of prime contracting and subcontracting.¹⁰⁷

Quality of Data - Courts also evaluate the dependability of the underlying data introduced to support race-conscious procurement programs. For instance, courts have considered the volume of data, how current it is, and how much data must be reviewed in order to satisfy strict scrutiny. Although there is not a strict requirement as to how many years must be included in a study (*i.e.*, the data time range), some courts caution against relying on small sample sizes.¹⁰⁸ With regard to the age of data, in *Rothe*, a federal appeals court held that disparity studies with 2003 data could support reenacting a federal program in 2006.¹⁰⁹ Agencies could rely on the most current available data, noting other circuit court decisions involving “studies containing data more than five years old when conducting compelling interest analyses.”¹¹⁰

Non-Goal Evidence - Another question that has arisen in the case law is whether evidence of a decline in M/WBE utilization following a change in, or termination of, an M/WBE program is relevant and persuasive evidence of discrimination. WSDOT argued in *Western States Paving* that there was evidence of discrimination in the fact that DBEs received 9 percent of subcontracting dollars on state-funded projects where there were no DBE goals and 18 percent of federal funded projects where there were DBE goals. But the Ninth Circuit stated that, “even in States in which there has never been discrimination, the proportion of work that DBEs receive on contracts that lack affirmative action requirements will be lower than the share that they obtain on contracts that include such measures because minority preferences afford DBEs a competitive advantage.”¹¹¹ The Fourth Circuit in *H.B. Rowe* found that a 38 percent decline in M/WBE utilization following the suspension for the program “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors’ reduced utilization of these groups during

¹⁰⁴ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914 quoting *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1556 n.16 (11th Cir. 1994) (quoting *Waisome v. Port Authority*, 948 F.2d 1370, 1376 (2nd Cir. 1991)).

¹⁰⁵ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 922.

¹⁰⁶ *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599 (3rd Cir.); *W.H. Schott Constr. Co.*, 199 F.3d at 218 (5th Cir.)

¹⁰⁷ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d 895, 920.

¹⁰⁸ *Associated Gen. Contractors of Am. v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996).

¹⁰⁹ *Rothe Dev. Corp. v. U.S. Dep’t of Def.*, 545 F.3d 1023, 1039 (Fed. Cir. 2008).

¹¹⁰ *Id.* (citing district court’s discussion of staleness in *W. States Paving Co.*, 407 F.3d at 992 and *Sherbrooke Turf, Inc. v. Minn. Dep’t of Transp.*, 345 F.3d 964, 970 (8th Cir. 2003)).

¹¹¹ *Western States Paving*, 407 F.3d at 1000.

the suspension.”¹¹² Similarly, the Eighth Circuit in *Sherbrooke Turf Inc. v. Minnesota Department of Transportation* and the Tenth Circuit in *Concrete Works IV* found that such a decline in M/WBE utilization was evidence that prime contractors were not willing to use M/WBEs in the absence of legal requirements.¹¹³ The evaluation of non-goal analysis was not expressly addressed in *AGC v. Caltrans*.

2.5 CONCLUSION

Recent years have seen relevant challenges to race- and gender-conscious preference programs in the transportation-constructing industry. In the Seventh Circuit, the federal DBE program and the programs of the Illinois Department of Transportation (IDOT) and the Illinois State Toll Highway Authority survived a Fourteenth Amendment equal protection challenge.¹¹⁴ A 2015 challenge to the constitutionality of the IDOT DBE was also unsuccessful before the Seventh Circuit.¹¹⁵ In 2013, the Ninth Circuit dismissed an appeal, on standing grounds, of a ruling adverse to a constitutional challenge to the California Department of Transportation’s DBE program, stating that the program would survive strict scrutiny.¹¹⁶ In the Fifth Circuit, the Southern District of Texas recently considered a challenge to Houston’s M/WBE program in *Kossmann Contracting v. City of Houston*.¹¹⁷ The case addressed an equal-protection challenge to the City of Houston’s 2013 Small/Minority Business Enterprise Program for Construction Contracts. The opinion provides an up-to-date discussion of current constitutional standards, relying primarily on *Croson*, more recent Supreme Court guidance, and Fifth Circuit analysis.

In creating and implementing a race-or gender-conscious contracting program, it is necessary to understand how the courts have interpreted the constitutional requirements. To satisfy strict scrutiny, agencies must provide a compelling interest for a race- or gender-conscious program. While gender-conscious programs are subject to intermediate scrutiny in practice, there has not been a significant difference in the judicial review of race-conscious versus gender-conscious contracting programs.

The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race and gender-conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys and other methods of anecdotal data collection.

If a factual predicate is found for a race- and gender-conscious efforts the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race-neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding the

¹¹² *H.B. Rowe*, 615 F.3d 233 at 248.

¹¹³ *Concrete Works IV* 321 F.3d at 985; *Sherbrooke Turf*, 345 F.3d 964, 973 (8th Cir. 2003).

¹¹⁴ *Midwest Fence Corp. v. United States Dep’t of Transp.*, 840 F.3d 932 (7th Cir. 2016).

¹¹⁵ *Dunnet Bay Constr. Co. v. Borggren*, 799 F.3d 676 (7th Cir. 2015).

¹¹⁶ *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep’t of Transp.*, 713 F.3d 1187, 1190 (9th Cir. 2013).

¹¹⁷ *Kossmann Contr. v. City of Houston*, No. H-14-1203, 2016 U.S. Dist. LEXIS 37708 (S.D. Tex. Feb. 16, 2016), *adopted by Kossmann Contr. Co. v. City of Houston*, No. H-14-1203, 2016 U.S. Dist. LEXIS 36758 (S.D. Tex. Mar. 22, 2016).

random inclusion of groups into the program. Working with these criteria the federal courts have consistently ruled that the federal DBE regulations are narrowly tailored.

CHAPTER 3. SUMMARY OF POLICIES,
PROCEDURES, AND PROGRAMS

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



In 2014, MGT conducted a disparity study on behalf of the Alaska Department of Transportation & Public Facilities (DOT&PF). An important part of the 2014 disparity study was a review of policies and procedures. To conduct the current study, MGT reviewed the 2014 disparity study to determine what if any significant changes have occurred since the last study. Like the review in the 2014 study, the policies and procedures review for this study concentrated primarily on construction projects and professional services agreements funded by the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). Section 1 describes the methodology deployed to conduct the review. The remaining sections focus on the structure in which procurement and contracting take place and the DOT&PF DBE Program.

CHAPTER SECTIONS



3.1	Methodology
3.2	Procurement/Contracting Structure
3.3	DBE Program Overview
3.4	DBE Goals
3.5	DBE Reporting
3.6	Certification and Prequalification
3.7	DOT&PF Civil Rights Office (CRO)
3.8	Nondiscrimination in Contracting
3.9	Financial Assistance Programs
3.10	Bonding Assistance
3.11	Management and Technical Assistance
3.12	Outreach
3.13	Summary

3.1 METHODOLOGY

This section summarizes the overall approach and methodology undertaken to conduct the review of DOT&PF's procurement and contracting policies. To conduct the review and to prepare this summary, a multi-faceted approach was used, which included collecting and reviewing source documents and materials related to procurement and contracting policies and the DBE Program. Policies and procedures were also reviewed and discussed with DOT&PF staff. The discussions with staff were used to help document and understand how policies and procedures are applied to DBEs and prime contractors. MGT also navigated the DOT&PF's website to review information and resources available to DOT&PF staff and firms interested in procurement and contracting opportunities. The policy review was conducted with the full cooperation of DOT&PF staff who provided data, information, insights and assistance to MGT throughout the policy review. Without the support and cooperation received by MGT, completing the policy review and other components of this study would have been difficult. The review of policies and procedures included the following:

- ◆ Finalizing the scope of the policy review for the 2015-2019 study period.
- ◆ Collection, review, and summarization of procurement/contracting policies and procedures.
- ◆ Collection, review, and summarization of policies, procedures, and other information and data pertaining to DOT&PF's DBE Program.
- ◆ Interviews/meetings with staff to document how policies are implemented and significant changes since the 2014 disparity study. As necessary, follow-up contacts were made to obtain additional information.
- ◆ Review of applicable rules, regulations, and federal and state laws governing contracting and procurement.

To provide further context for the review and analysis, MGT collected and reviewed the documents itemized in **Table 3-1**.

TABLE 3-1. DOCUMENTS REVIEWED DURING THE POLICY AND PROCEDURES REVIEW

INDEX	DESCRIPTION
<i>Procurement Related Documents</i>	
1.	Alaska Statutes, Title 36, Public Contracts
2.	Alaska Administrative Code, Title 2, Chapter 12
3.	Central Region Tentative RFP Advertising Schedule 12/2/2019
4.	Northern Region Tentative RFP Advertising Schedule 2/27/2020
5.	Contract Award Manual
6.	Professional Services Agreement (PSA) Manual, January 2018
7.	RFP/PSA # 25202074 Homer Airport Improvement Design Services
8.	RFP/PSA 25201021 Fairbanks 5 th Avenue Reconstruction-Public Involvement
9.	RFP/PSA 25202073 Mat Su Intra-regional Corridor
10.	RFP/PSA 252057 Sterling Hwy MP 45-60, Phases 2-5 CMGC Independent Cost Estimator Services
11.	RFP/PSA Seward Highway-36 th Avenue Intersection Reconstruction Appraisal Services
12.	Small Procurement Manual for Construction Projects, March 2014 Edition
13.	Standard Provisions Booklet (DOT & PF Standard Provisions for Small Procurements of Construction Related Professional Services) January 2018
14.	State Administrative Manual, Sections 81 and 82
<i>DBE and SBE Documents</i>	
15.	2016 DBE Program Shortfall Analysis and Action Plan (FWHA)
16.	2020 50% Reimbursement Application
17.	49CFR Part 26, 49CFR Part 23
18.	DOT&PF DBE Proposed Goal March 17,2018
19.	DOT&PF, Department of Transportation and Public Facilities, Civil Rights Office, Organization Charts
20.	DOT&PF, FHWA DBE Program Plan 11/8/2016 and 8/31/2017
21.	DOT&PF, FHWA SBE Plan July 17,2012
22.	DOT&PF, Implementation Plan for Title VI of the Civil Rights Act of 1964, 2009
23.	Alaska Unified Certification Program Agreement, Revised 1/1/2015
24.	DBE Support Services
25.	FAA Approval Airport Concessions ACDBE Program and Overall Goals FFY 2013-FFY 2015

INDEX	DESCRIPTION
26.	FAA FY 2015-FY 2017 DBE Goal Approval Letter for Central Region
27.	FAA FY 2015-FY 2017 DBE Goal Approval Letter for Northern Region
29.	FAA FY 2015-FY 2017 DBE Goal Approval Letter for Southcoast Region
29.	FFY 2013-FFY 2015 DOT&PF Disadvantaged Business Enterprise (DBE) Triennial Goal Methodology: Federal Transit Administration (FTA)
30.	FFY 2015-FFY 2017 DOT&PF DBE Triennial Goal Methodology (FHWA)
31.	FFY 2018-2020 DBE Goal Methodology Legal Sufficiency Letter October 23,2017
32.	FHWA 2015-2017 DBE Triennial Goal Methodology
33.	FHWA DBE Program Plan Approval Letter May 8,2015
34.	FHWA FFY 2020-2022 DBE Goal Setting Methodology
35.	FTA Goal Methodology FFY 20150FFY 2017
36.	FWHA FFY 2018-2020 DBE Goal Methodology
37.	Statewide Transportation Improvement Program (STIP) Amendment 4 Approved September 16,2019
38.	Welcome to the DBE Program for FHWA Programs
39.	Your Guide to DBE Certification with the Alaska Unified Certification Program, Revised July 2016

3.2 PROCUREMENT/CONTRACTING STRUCTURE

DOT&PF’s organization structure was important for placing procurement and contracting into proper context and understanding the role of the Civil Rights Office (CRO) and the DBE Program. **Exhibit 3-1** shows the organizational structure for the DOT&PF. The structure for the Civil Rights Office which is housed in Administrative Services is shown in **Exhibit 3-2** and **Exhibit 3-3** shows DOT&PF regions.

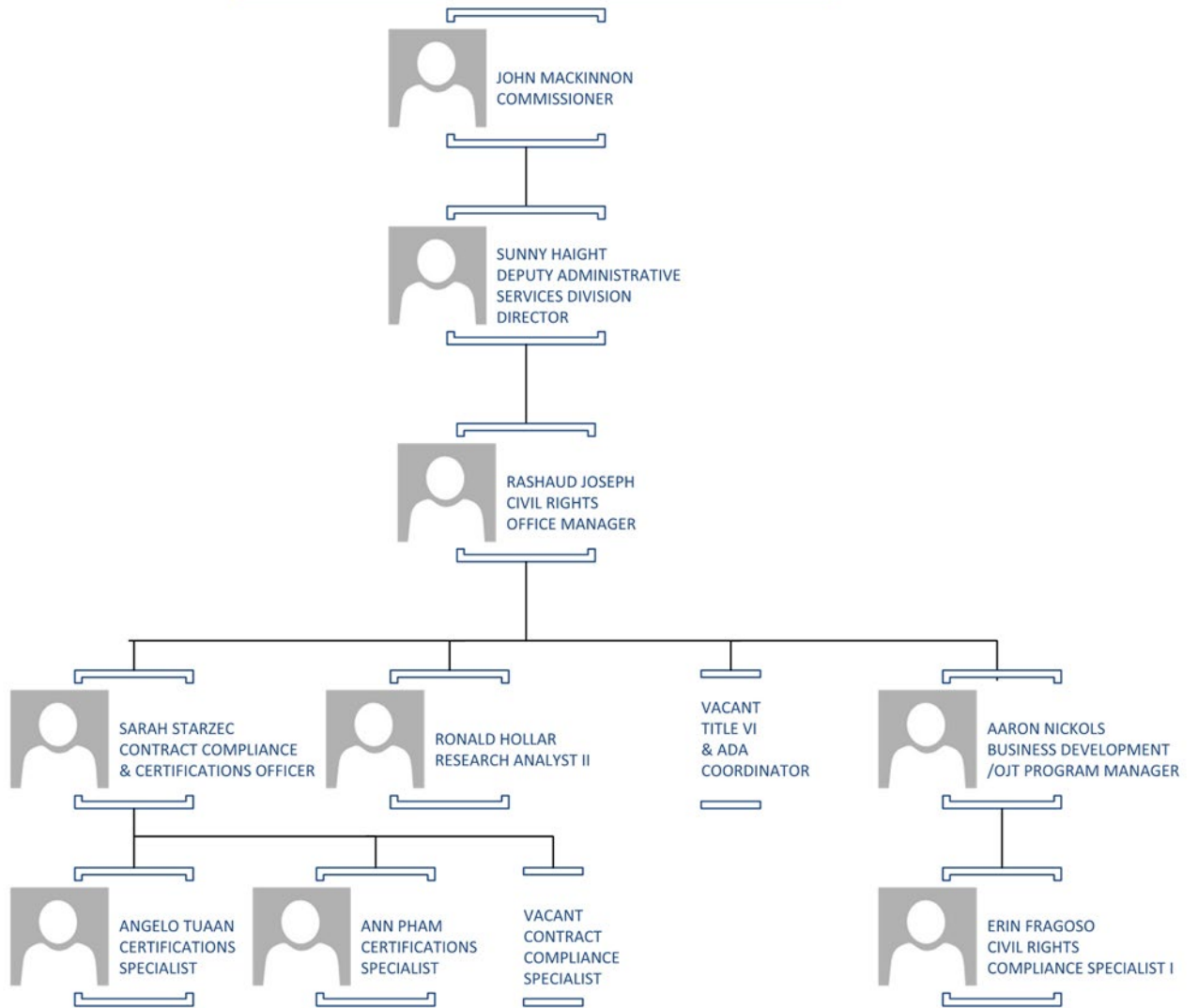
DOT&PF staff in Central, Northern, and Southcoast Region and CRO staff perform a broad spectrum of activities aligned with procurement/contracting policies and the regulations that govern DBE participation. Interviews and meetings with staff provided valuable insight into the overall structure and operations in each region, differences and similarities in procurement and contracting in each region, and DBE participation. Discussions with staff focused mainly on procurement and contracting practices, and processes and their impact on DOT&PF and DBE participation on FWHA, FAA, and FTA funded projects. Based upon discussions with staff, since the 2014 disparity study, there have been few major changes in policies and practices and changes which have occurred are largely the result of operating race-neutral programs in the Central and Southcoast Region and a race-conscious program in the Northern Region. MGT’s review concluded that the DOT&PF’s staff are very knowledgeable about procurement and

contracting practices and DBE regulations and requirements. Based on MGT's review policies are well documented, relatively user-friendly and facilitated by the following:

- ◆ Routine application of procurement and contracting policies.
- ◆ Coordination of all phases of the procurement and contracting process from identifying the need to contract award.
- ◆ Coordination, support, and guidance to staff in the procurement of goods and services and DBE participation.
- ◆ Effective compliance and monitoring of civil rights programs.
- ◆ Coordination, support, and assistance to DBEs seeking procurement opportunities with the DOT&PF.

Although staff in each region generally performs similar functions related to procurement and contracting and the DBE Program, there are differences based upon staffing, uniqueness of the region, DBE availability and participation, project requirements and other factors. For example, while all projects funded with federal funds are required to provide DBEs opportunities to participate in contracts, the Northern Region operates a race-conscious DBE program whereas the DBE programs in the Central and Southcoast Region are race-neutral. Staff comments also revealed an emphasis on ensuring that policies and procedures are applied fairly and consistently and routinely followed. Overall staff were complimentary about procurement processes and efforts to ensure DBE participation. In addition to meetings with staff, MGT's review of the DOT&PF's website was extremely helpful in documenting information and resources available to staff and to firms seeking procurement and contracting opportunities.

EXHIBIT 3-1. DOT&PF ORGANIZATION CHART
ALASKA DOT&PF CIVIL RIGHTS OFFICE (AUG. 1, 2020)



Source: DOT&PF.

EXHIBIT 3-2. DOT&PF REGIONS



Source: DOT&PF website, 2020.

Within the organization structure shown above, DOT&PF operates a massive transportation infrastructure comprised of Alaska’s highways, airports, public transit, passenger/vehicle ferries and rail that include the following:

- ◆ 5634 centerline miles/11,737 lane miles of roads/highways
- ◆ 74 DOT&PF staffed Maintenance Stations
- ◆ 239 State Airports
- ◆ 2 International Airports
- ◆ 12 Ferries
- ◆ 35 Ports of Call
- ◆ 17 Harbors
- ◆ 831 DOT&PF owned bridges
- ◆ 2 DOT&PF owned tunnels
- ◆ 7,370 pieces of state equipment and vehicles
- ◆ 776 Public Facilities occupied by 17 state and local agencies
- ◆ 9 weigh stations
- ◆ 2.5 mile Anton Anderson Memorial Tunnel-the longest highway and rail tunnel in North America
- ◆ Approximately \$12.6 billion in transportation asset infrastructure¹¹⁸

¹¹⁸ DOT&PF Department Fast Facts Prepared for Legislative Session 2020.

3.3 DBE PROGRAM OVERVIEW

The sections which follow were primarily shaped by MGT's review of documents in **Table 3-1**, discussions with DOT&PF staff regarding contracting and the DBE Program, the review of DBE information and resources on DOT&PF's website, and the 2014 disparity study. MGT focused considerable attention on CFR 49 Part 26 which governs DBE participation in federally assisted transportation projects. Like other DBE programs around the country, DOT&PF's DBE Program functions and operates to comply with CFR 49 Part 26 in prohibiting discrimination and promoting DBE participation in federally assisted projects. MGT's attention to the DBE Program was essential given DBE availability and participation is the primary focus of the disparity study. In addition, as part of the disparity study, the policy review and DBE program are key components in recommending legally defensible actions to be taken by DOT&PF in the administration of 49 CFR Part 26.

As documented in the 2014 disparity study, on December 21, 2005, the USDOT Counsel's Office issued guidance to all FHWA, FAA, and FTA recipients under the jurisdiction of the US Ninth Circuit Court of Appeals requiring them to conduct a disparity study to support a DBE race-conscious program, if they did not currently have a study. This study is DOT&PF's third disparity study. Each of the previous studies have served as the basis for programmatic changes and establishing DBE goals.

On April 1, 2011, DOT&PF returned to race-conscious goals for FAA and FTA funded projects. FHWA approved a return to race-conscious project goals in June 2011.¹¹⁹ On April 1, 2011, DOT&PF began setting goals on FHWA construction projects in the Northern and Southeast Regions. On October 1, 2011, DOT&PF began setting goals on FHWA construction projects in the Central Region. On April 1, 2012, DOT&PF began setting goals on professional services agreements (PSAs).

FHWA approved a waiver for the Central Region on March 30, 2011, and DOT&PF implemented the waiver on September 15, 2011. This waiver provided that certified DBEs owned by nonminority women would be omitted from DBE contract goal setting in the Central Region on FHWA projects.¹²⁰ The waiver did not apply to PSAs. Under the waiver, using nonminority women was counted as race-neutral utilization towards the DBE goal. On December 14, 2012, DOT&PF asked the FHWA to remove the waiver based on its experience with the Central Region waiver and a survey of prime contractors, subcontractors, and DBEs in the fall of 2011.¹²¹

Effective May 8, 2015, based on approval by USDOT, DOT&PF implemented a race-neutral DBE program for construction related professional services. The race-neutral DBE program applied to all Federally assisted projects except FAA funded projects in the Northern region which remain race-conscious. Although a race-neutral program does not require specific DBE goals for individual projects 49 CFR places responsibility on the bidder to make a portion of the work available to DBEs.

¹¹⁹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹²⁰ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹²¹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

3.4 DBE GOALS

DBE ASPIRATIONAL GOALS

During the study period covered by the 2014 disparity study for most of the study period DOT&PF operated in a race-neutral environment without project goals. The period (2015-2019) for this study include both race-neutral and race-conscious goals. For the purpose of this review, MGT examined the DBE goal methodology found on DOT&PF's website and reviewed goal methodology documents provided by staff. **Table 3-2** through **Table 3-4** provide DBE goals for FHWA, FAA, and FTA assisted contracts.

TABLE 3-2.
FHWA GOALS
FFY 2011 THROUGH FFY 2020

FFY	DBE GOAL	RACE-NEUTRAL DBE GOAL	RACE-CONSCIOUS DBE GOAL
FHWA			
2011	13.00%	5.70%	7.30%
2012-14	10.82%	5.09%	5.73%
2015-17	8.46%	8.46%	0.00%
2018-20	8.83%	8.83%	0.00%

Source: DOT&PF.

TABLE 3-3.
FAA GOALS
FFY 2011 THROUGH FFY 2017

FFY	DBE GOAL	RACE-NEUTRAL DBE GOAL	RACE-CONSCIOUS DBE GOAL
FAA			
2011	13.00%	4.30%	8.70%
2012-14	10.50%	5.55%	4.95%
2015-17 (by region)			
Central Region	8.30%	8.30%	0.00%
Northern Region	7.93%	5.54%	2.39%
Southcoast Region	6.1%	6.1%	0.00%

Source: DOT&PF.

TABLE 3-4.
FTA GOALS
FFY 2011 THROUGH 2017

FFY	DBE GOAL	RACE-NEUTRAL DBE GOAL	RACE-CONSCIOUS DBE GOAL
FTA			
2011	13.00%	9.20%	3.80%
2012-14	8.81%	5.71%	3.10%
2015-17	5.92%	5.92%	0.00%

Source: DOT&PF.

Tables 3-2 to 3-4 present DOT&PF DBE goals from FFY 2011 to FFY 2017 for FAA and FTA and from FFY 2011 to FFY 2020 for FHWA. To fully understand the allocation of goals MGT reviewed the DBE Program Plan, DBE Goal Methodology, DBE Goal approval letters, Legal Sufficiency letters, and data provided by staff. The review of DBE Goal Methodology provided context for the importance of disparity study results in establishing DBE goals. The results of this study will provide similar context and support for DBE goal setting in subsequent years. **Table 3-2** shows FHWA DBE goals from FFY 2011 through FFY 2020. As shown in **Table 3-2**, DBE goals decreased since FFY 2011 when the DBE goal was 13 percent. **Table 3-3** shows FAA DBE goals from FFY 2011 through FFY 2017. DBE goals for FFY 2015 through FFY 2017 are shown by region (Central, Northern, Southcoast). As shown in **Table 3-3**, the Northern Region is the only region with a race-conscious goal (2.39%). Finally, in **Table 3-4** FTA DBE goals are shown for FFY 2011 through FFY 2017. **Table 3-4** reflects DBE goals for FTA have decreased since FFY 2011 when the DBE goal was 13 percent. Prior to the 2014 disparity study the DBE goal in 2011 was 13 percent for FHWA, FAA, and FTA. The 2014 Disparity Study provided the rationale and evidence for reconfiguring goals and establishing race-conscious goals in the Northern Region.

DBE PROJECT GOAL SETTING

In DOT&PF, DBE goal setting is a deliberate and well-defined process. Typically, the starting point for DBE Project Goal setting begins prior to advertising when DOT&PF Project/Design Engineers issue a request for a DBE Goal from the Civil Rights Office (CRO). The DOT&PF CRO establishes the DBE project goal by evaluating the engineers' estimates, work categories, sub-contractable items, and recommended DBE goal. Each work item is evaluated for possible sub-contractable items. The CRO considers the project location, available DBEs in the relevant work categories within the project's geographic region, and other important factors in the goal-setting process. DBEs must be certified in the work category the prime is using to meet the DBE goal. The DBE goal is then based on the ratio of total DBE sub-contractable items and the engineer's estimated basic bid. After contract award, DBE goals are reviewed at the preconstruction conference along with the designation of the CRO Representative.¹²²

DOT&PF does not place DBE goals on state-funded transportation contracts. However, as documented in the 2014 disparity study, a 1983 Alaska Administrative Order provided that, "The commissioner [of the Department of Transportation] shall take all possible affirmative action which the commissioner determines will help (1) to overcome effects of past discrimination against minorities, women, and other

¹²² DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

classes of persons protected by AS 18.80.200, in the contracting business; and (2) to promote full and equal opportunity for business enterprises owned and controlled by minorities, women, and other classes of persons protected by AS 18.80.200, to receive public construction funds.”¹²³

GOOD FAITH EFFORTS REQUIREMENTS

Good faith efforts (GFE) are required under CFR 49 Part 26 (26.53).¹²⁴ DOT&PF’s good faith efforts requirements remain largely unchanged during the study period and are written to align and comply with GFE provisions in CFR 49 26.53 as outlined in DOT&PF’s DBE Program Plan and Section 120-3.01. The Civil Rights Office (CRO) plays a major role ensuring compliance with GFE requirements according to the guidelines outlined in the DBE Program Plan which require the following information within 5 working days of bid submission where contract goals have been established.

- ◆ Name and addresses of DBEs that will participate in the contract
- ◆ Description of the work each DBE will perform
- ◆ Dollar amount of the participation of each DBE firm
- ◆ Written and signed documentation of commitment to use a DBE subcontractor
- ◆ Written and signed confirmation from the DBE that is participating in the contract
- ◆ If the contract goal is not met, evidence of good faith efforts will be evaluated¹²⁵

Section 120-3.01 contains well-articulated provisions for GFE compliance prior to and after bid award. A key provision is not allowing bidders to supplement DBE efforts after bid opening, nor offer new or additional DBE participation after submission of the DBE Utilization Report (Form 25A-325)¹²⁶. In addition to the DBE Program Plan and Section 120-301, the Civil Rights Forms site in DOT&PF’s website provides ample guidance and direction to all bidders regarding compliance with GFE. Included in the site are forms and instructions for the following:

- ◆ Contact Report 25A-321A
- ◆ DBE Sub-contractable Items 25A-324
- ◆ DBE Utilization Report (25A-325C)
- ◆ Prime Contractors Written DBE Commitment Form (25A-326)
- ◆ Subcontract List (25D-5)
- ◆ Summary of DBE Participation 25A-336
- ◆ Summary of DBE Participation (25A-336) Instructions
- ◆ Summary of GFE Documentation (25A-332)

¹²³ State of Alaska, Office of the Governor, Administrative Order No. 76. *Alaska Construction Manual*, page 7-1.

¹²⁴ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹²⁵ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹²⁶ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

- ◆ Commercially Useful Function (CUF) Monitoring Report (25A-298)

MGT's review of the above GFE documents found them to be instructive, informative, and easy to understand and follow.

After evaluation of the bids, a Notice of Intent is sent to the apparent low bidder which includes the DBE Utilization Report (Form 25A-325C) and a Request for Written DBE Commitment (Form 25A-326). The apparent low bidder has five working days to return the forms. If the apparent low bidder is unable to meet the DBE goals, the bidder must submit:

- ◆ DBE Summary of Good Faith Efforts Documentation (Form 25A-332A).
- ◆ DBE Contact Reports (Form 25A-321A) and all acceptable verification documents.
- ◆ DBE Utilization (Form 25A-325C).

The DOT&PF Contact Report for federal aid contracts asks whether the bidder: (1) identified specific items of work when asking for a quote; (2) offered assistance with bonding and insurance; (3) provided all appropriate information concerning the specific work items; (4) was presented a DBE quote that was more than 10 percent higher than the accepted quote; and (5) received a quote from a DBE which was unable to perform in some capacity.¹²⁷

The CRO decides whether to accept the GFE documentation and proposed efforts or to award the contract to the next lowest bidder who meets the DBE goal or completes a successful GFE submission. If the apparent low bidder fails to satisfy the GFE requirements, the bidder has three days to seek an administrative reconsideration.¹²⁸ For reconsideration, the bidder must provide written documentation or arguments addressing efforts to meet the DBE goal. No additional DBE good faith effort contact information may be provided.¹²⁹ If the reconsideration is denied, then the Notice of Intent to award is made to the next lowest responsive and responsible bidder that meets the DBE goals or completes a successful GFE submission.

The specific DOT&PF GFE requirements¹³⁰ are as follows:

- Consider all sub-contractable items.** The bidder shall, at a minimum, seek DBE participation for each of the sub-contractable items with an established DBE goal, as identified on Form 25A-324, before bid opening. It is the bidder's responsibility to facilitate DBE participation by making the work listed on the sub-contractable items available to DBE firms. If the bidder cannot achieve the DBE Utilization Goal, then the bidder may also consider other items not listed that could be subcontracted to DBEs.
- Initial DBE notification.** All DBEs listed in DOT&PF's current DBE Directory that have a "Yes" under Required GFE Contact and "Yes" under the specific Work Area (Region) must be contacted at least

¹²⁷ DOT&PF, Contact Report, Federal Aid Contracts, Form 25A-321A (1/02).

¹²⁸ 49 CFR Part 26.53(d) provides for administrative reconsideration. DOT&PF *Alaska Construction Manual*, effective April 15, 2012, page 3-3.

¹²⁹ DOT&PF, 2011 DBE Program, March 2012 Addendum, Section 120-3.02, page 4-8.

¹³⁰ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

seven calendar days prior to bid opening. DBEs certified to perform work items identified on Form 25A-324 must be contacted to solicit their interest. Each contact with a DBE firm will be logged on a Contact Report, Form 25A-321A. The bidder must give DBEs at least five calendar days to respond. The bidder may reject DBE quotes received after the deadline. Such a deadline for bid submission by DBEs will be consistently applied.

The only acceptable methods of initial and follow up notification are:

- i) By fax with a confirmation receipt of successful transmission to the DBE's fax number listed in the DBE directory. A fax transmission without receipt of successful transmission is unsatisfactory.
 - ii) By email with confirmation of successful receipt by DBE's email address listed in the DBE directory. An email without confirmation of successful receipt is unsatisfactory.
 - iii) By U.S. Mail to DBE's address listed in the DBE directory with a return receipt required. Letters mailed without a return receipt signed by the DBE or DBE key employee are unsatisfactory. Delivery confirmation with evidence of successful delivery is an acceptable substitute for return receipt.
 - iv) By telephone solicitation with a record of the date and time of the telephone call made to the DBE's telephone number listed in the DBE directory. Telephone solicitation without a record of date and time is unsatisfactory.
- c) **Non-Competitive DBE Quotes.** DBE quotes more than 10 percent higher than an accepted non-DBE quote will be deemed non-competitive, provided they are for the exact same work or service.

All evidence in support of a non-competitive bid determination must be provided at the time of the GFE submittal. When a DBE quote is rejected as being non-competitive, the work must be performed by the non-DBE subcontractor whose quote was used to provide the basis of the determination. Payments received by the non-DBE subcontractor during the execution of the contract shall be consistent with the accepted quote. This does not preclude increases due to changes in documents issued by DOT&PF.

- d) **Assistance to DBEs.** Contractors must provide DBEs with:
- i) Information about bonding or insurance required by the bidder.
 - ii) Information about securing equipment, supplies, materials, or related assistance or services.
 - iii) Adequate information about the requirements of the contract regarding the specific item or work or service sought from the DBE.
- e) **Follow-up DBE notifications.** Contact the DBEs to determine if they will be bidding. For acceptable forms of notification and required documentation, see 120-3.02, subsection 1.b items 1 through 4.
- f) **Good Faith Effort Evaluation.** Subsections (a) through (e) must be completed for a GFE-based submission to be considered. Failure to perform and document actions contained in subsections (a) through (e) constitute insufficient GFE. After submitting a GFE, bidders may only clarify efforts taken before opening. No new efforts or additional DBE participation are permitted after bid opening.¹³¹

¹³¹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

Prime contractors are only required to contact DBEs in the specific work category in the specific region. On contracts with no DBE goals, bidders do not have to document their GFE. The CRO is tasked with determining whether a bidder's GFE was responsive.

SUBCONTRACTOR DISCLOSURE AND SUBSTITUTION

Subcontractor disclosure and substitution remain unchanged during the study period. As documented in the 2014 study bidders are required to disclose subcontractors within five days of identification as the apparent low bidder.¹³² The Project Engineer cannot allow a subcontractor to perform any work without a signed Contractor Self-Certification (Form 25D-042).¹³³ Once the contract is awarded, the successful bidder must subcontract the items indicated on its Subcontractor List. Bidders are allowed to substitute subcontractors with the approval of the CRO through the Regional Construction Officer under certain conditions, including subcontractor bankruptcy, poor performance, inability to meet bonding requirements, licensing deficiencies, and state and federal affirmative action requirements.¹³⁴ However, under the DOT&PF DBE program, a contractor cannot terminate a DBE subcontractor without the approval of the CRO Compliance Officer or CRO Manager in the absence of the Compliance Officer.

PROFESSIONAL SERVICES AGREEMENTS (PSA)

According to staff, PSAs experienced little change during the study period. For small PSAs, DOT&PF rules provide that if there is FHWA or FAA funding, at least one certified DBE (if there is a DBE reasonably available and certified for the required work) must be solicited for a proposal.¹³⁵ Small procurements are those greater than \$5,000 and less than or equal to \$200,000. For competitive sealed agreements, the DOT&PF PSA Manual provides that if there is sub-contractable work the procurement can provide for DBE goals.¹³⁶

3.5 DBE REPORTING

DOT&PF tracks DBE prime and subcontractor construction spending in dollar and percentage in accordance with 49 CFR 26.37 which requires a running "tally" of actual DBE attainments and comparing attainments to commitments and displayed in DBE participation reports.¹³⁷ Contractors must submit evidence of payments to DBE subcontractors, manufacturers, and brokers/dealers on the DBE monthly summary (Form 25A-336). The CRO Research Analyst is responsible for tracking the payment and achievement of the DBE project goal for creditable Commercially Useful Functions (CUF). The Project Engineer verifies CUF by conducting sight and see checks using the CUF form.

Table 3-5 displays data from the Uniform Reports of DBE Commitments/Awards and Payments for FFY 2015-2019 for FHWA, FAA, and FTA. For FHWA contracting volume decreased during FFY 2015-2019 and DBE utilization significantly increased from 9.1 percent in FFY 2015 to 30.4 percent in FFY 2019. For FAA data was only available for FFY 2015 to 2017. As shown in Table 3-5 there was not very much variation in

¹³² DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹³³ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹³⁴ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹³⁵ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹³⁶ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹³⁷ 49 CFR 26.37.

contracting volume or DBE utilization. For FTA contracting volume increased significantly from FFY 2015 to FFY 2019 while DBE utilization remained relatively stable.

TABLE 3-5.
DOT&PF FHWA, FAA, AND FTA DBE SPENDING ACTUAL PAYMENTS ON CONTRACTS
FFY 2015 THROUGH FY 2019

FFY	DBE CONTRACTING VOLUMES	DBE PERCENTAGE UTILIZATION
FHWA		
2015	\$56,570,409	9.1%
2016	\$29,740,645	5.6%
2017	\$38,116,421	7.7%
2018	\$24,280,961	7.6%
2019	\$27,677,895	30.4%
FAA		
2015	\$16,761,492	4.5%
2016	\$15,632,125	7.3%
2017	\$11,842,517	7.6%
2018	data unavailable	data unavailable
2019	data unavailable	data unavailable
FTA		
2015	\$4,868	0.1%
2016	\$0.00	0.0%
2017	\$0.00	0.0%
2018	\$23,381	3.2%
2019	\$59,274	2.2%

Source: DOT&PF, Uniform Reports of DBE Commitments/Awards and Payments, FFY 2015-19.

3.6 CERTIFICATION AND PREQUALIFICATION

DBE CERTIFICATION

The CRO is responsible for DBE certification in compliance with the DBE Program Plan and 49 CFR part 26.83. According to staff there have been very few changes in certification since the 2014 disparity study. While DBEs from other states can be certified in Alaska, DOT&PF does not automatically certify DBEs from other states.¹³⁸ The DBE must be certified in their home state in order to be eligible for certification in Alaska by the Alaska Unified Certification Program (AUCP). In the case of a hearing, DOT&PF uses a member of the Western Association of State Highway Transportation Officials (WASHTO) Subcommittee on Civil Rights to serve as the knowledgeable decision-maker for removal of DBE certification.¹³⁹

¹³⁸ DOT&PF, 2011 DBE Program, page 21.

¹³⁹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

In compliance with 49 CFR 26.81 (Subpart E), FHWA approved the Alaska Unified Certification Program in 2003.¹⁴⁰ The following are AUCP members:

- ◆ Alaska Department of Transportation and Public Facilities (DOT&PF)
- ◆ Alaska Industrial Development & Export Authority (AIDEA)
- ◆ Alaska Railroad Corporation
- ◆ Alyeska Pipeline Service Company
- ◆ Anchorage, Municipality of
- ◆ Center for Community, Inc. (Sitka, Alaska)
- ◆ Central Area Rural Transit System, Inc. (CARTS)
- ◆ Cook Inlet Tribal Council (CITC)
- ◆ Fairbanks, City of
- ◆ Inter-Island Ferry Authority (Craig, Alaska)
- ◆ Juneau, City and Borough of
- ◆ Kodiak, City of
- ◆ Matanuska-Susitna Borough
- ◆ Nenana, City of
- ◆ North Pole, City of
- ◆ North Slope Borough
- ◆ North Star Borough
- ◆ Palmer, City of
- ◆ Sitka, City and Borough of
- ◆ Skagway, City of

The DOT&PF DBE directory is updated weekly and posted on the DOT&PF website.¹⁴¹ The DOT&PF online DBE directory allows for a search of firms by name, NAICS Code, work category, and location. As of May 2, 2020, there were 212 certified DBEs, of which a majority (150) had an Alaska address.¹⁴² Of the 62 firms located outside of the state of Alaska, 23 were minority-owned firms.¹⁴³ The 212 DBEs is a decrease of 24 firms over the 236 DBEs reported in the 2014 Disparity Study.¹⁴⁴

¹⁴⁰ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁴¹ DOT&PF DBE Directory.

¹⁴² DOT&PF DBE Directory.

¹⁴³ DOT&PF DBE Directory.

¹⁴⁴ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

One special issue in DBE certification is Alaska Native Corporations (ANCs).¹⁴⁵ There are special rules exempting ANCs from size, ownership, and control rules for DBE certification; in particular, “an entity meeting criteria to be an ANC-owned firm must be certified as a DBE, even if it does not meet size, ownership, and control criteria otherwise applicable to DBEs.”¹⁴⁶ Consequently, ANCs can be very large organizations with extensive federal contract awards. ANCs were awarded \$23.7 billion in federal contracts between 2015 and 2008.¹⁴⁷ A concern was expressed in the anecdotal material in the 2008 Disparity Study and to a lesser extent in the 2014 Disparity Study that large ANCs were taking away opportunities from smaller DBEs.¹⁴⁸ ANCs are not identified separately in the DBE directory. In the federal System for Award Management (SAM), there were 44 ANC construction firms in Alaska in 2020.¹⁴⁹

MINORITY AND WOMEN BUSINESS CERTIFICATION

There is no DOT&PF minority/women business certification and no other state or local minority/women business certification program in Alaska. The federal SAM is the other primary source of certified minority/women business firms in Alaska. The SAM database includes government certified firms, such as 8(a) companies and self-certified firms.

PREQUALIFICATION

Neither subcontractor nor prime construction bidders are required to be prequalified for DOT&PF construction projects. However, all contractors must complete a bidder’s registration form annually. As part of filing for a certificate of registration, a general contractor or subcontractor must file a \$10,000 bond with a surety; a specialty contractor must file a \$5,000 bond.¹⁵⁰ A cash deposit is acceptable in place of a bond.

As mentioned, the Alaska Unified Certification Program (AUCP) chooses not to accept the applicant firm’s home state certification. The applicant firm must provide a copy of the application, all supporting documents, and any other information it has submitted to the home state. The applicant must be certified in its home state in order to be eligible for certification by the AUCP. Within seven days of receiving all of the required information from the applicant firm, the AUCP requests a copy of the onsite visit review report from the home state UCP, any onsite visit updates, and any evaluation of the firm based on the site visit. Next, the AUCP searches for the firm’s record on DOCR’s web-based database. If applicable, a search is conducted for an Alaska professional license and/or certificate on the Alaska Department of Commerce, Community, and Economic Development, Corporations, Business & Professional Licensing site. The AUCP analyzes the information provided information and unless a determination is made that there is good cause to believe that the home state’s certification is erroneous (or should not apply in Alaska) the AUCP

¹⁴⁵ ANCs were established as part of the settlement of the Alaska Native Settlement Claims Act of 1971. 43 US 1601 *et seq.* ANCs were deemed to be economically disadvantaged for all federal procurement programs in 1992.43 USC Sec 1626(e)(1).

¹⁴⁶ 49 CFR Part 26 Supplementary Information; 49 CFR Part 26.73(i).

¹⁴⁷ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁴⁸ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁴⁹ Data on ANCs can be located at http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm. There were 44 Native owned construction firms in the SAM database in 2020. SAM was formerly the Central Contract Registry.

¹⁵⁰ AS 08.18.071. Bond Required.

must, no later than 60 days from the date on which all of the required information was received, , send to the applicant firm a notice that it is certified and place the firm in the AUCP directory of certified firms.

DBE Decertification (Removing DBE Eligibility)

The AUCP will send a certified letter of the Notice of Intent (NOI) to remove DBE eligibility. The DBE has 15 days, from the date the NOI was sent, to submit a request for an informal hearing or present information and arguments in writing without going to a hearing. If there is no response from the DBE, a certified letter is sent to notify the firm that they have been decertified. The firm can file an appeal, in writing, to the USDOT within 90 days of the date of the final decision from the AUCP. The AUCP will include the regulations and the address for the DBE to file an appeal. The informal hearing will be presided by a neutral third party, such as a Civil Rights Manager from another state. The AUCP records the informal hearing and creates an audio transcript. The DBE remains certified until, and unless, it is decertified through the due process set forth in 49 CFR Part 26.87

3.7 DOT&PF CIVIL RIGHTS OFFICE (CRO)

The Civil Rights Office (CRO) is responsible for promotion, compliance, monitoring and external affirmative action programs, including Title VI of the Civil Rights Act of 1964, On the Job Training (OJT) Program, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.¹⁵¹ Organizationally, the CRO is part of DOT&PF Administration and Support and is budgeted for nine positions.¹⁵² The CRO Manager provides leadership of the CRO and oversight of the following functions:

- ◆ Administration and Statistical Reporting.
- ◆ Technical Support and Compliance (Contractor Compliance, Title VI Specialist).
- ◆ Alaska UCP (DBE certification and appeals).
- ◆ Support Services (OJT Programs & Support Services, DBE Support Services).

The DOT&PF DBE plan delegates the following responsibilities to the CRO:

1. Review federal and state laws and regulations to make policy recommendations to the Chief Contracts Officer and the Commissioner.
2. Conduct certification and re-certification of DBE applicants.
3. Perform internal compliance audits and manage DBE reporting systems.
4. Establish support services to assist all aspects of the DBE program and assist DBEs and prospective DBEs prior to and during their participation in the program.

¹⁵¹ *Alaska Construction Manual*, page 7-1 (citing Policy and Procedure 01.02.010).

¹⁵² Alaska Office of Management and Budget, Department of Transportation and Public Facilities FFY2014 Proposed Budget, Components Summary, http://omb.alaska.gov/ombfiles/14_budget/Trans/Proposed/14compsummary_trans.pdf.

5. Assist bidders, DBEs, regulatory agencies, prospective DBEs, and community organizations on DBE matters.
6. Assist DOT&PF personnel, contractors, DBEs, and other interested parties in resolution of DBE problems.
7. Develop, maintain, and implement DBE Program Operating Methods, which are incorporated herein by reference.
8. Provide direct technical assistance to DOT&PF personnel regarding contract language, administration, and negotiation; evaluate DOT&PF contract specifications, guidelines, and procedures as they relate to DBE matters.
9. Implement a technical assistance plan to help DBEs improve their competitiveness in the transportation infrastructure construction industry.
10. Regularly publish a DBE directory.
11. Establish DOT&PF's annual overall DBE goal, as well as establish individual DBE project goals for federally funded construction projects.¹⁵³

To carry out responsibilities delegated in the DBE Plan, CRO provides the following core services:

- ◆ Promote, implement, and monitor compliance with affirmative action programs such as Disadvantaged Business Enterprise (DBE), Airport Concessionaire DBE Program, External Equal Employment Opportunity, and On-The-Job (OJT) Training. These programs apply to contractors and subcontractors working on U.S. Department of Transportation funded projects and provide opportunities which otherwise would not normally exist within the construction industry.
- ◆ Assure on-going compliance with two non-discrimination programs (Title VI of the Civil Rights Act of 1964 and the ADA), which ensure equal treatment during all phases of operation.
- ◆ Provide two support services programs that give assistance to contractors and the public in understanding and participating in the DBE and OJT programs.
- ◆ Coordinate with tribal and rural local governments to encourage local employment on the department's transportation projects.
- ◆ Conduct Contract Compliance Reviews.
- ◆ Review and analyze DBE Certifications.
- ◆ Facilitate Post Award Conferences.
- ◆ Set DBE and OJT goals.
- ◆ Review and analyze Good Faith Efforts.
- ◆ Review and approve DBE Clearances.¹⁵⁴

¹⁵³ DOT&PF, December 2011 DBE Program Update, page 8.

¹⁵⁴ State of Alaska, *FY2020 Governor's Operating Budget*, p. 2.

In providing core services and carrying out responsibilities delegated in the DBE Plan, the CRO has been proactive in accomplishing the following:

- ◆ Updated the DBE Program Plan for compliance with 49 CFR Part 26.
- ◆ Worked with Federal Highway Administration (FHWA) to bring the department's prompt payment monitoring mechanisms into compliance with the requirements of 49 CFR Part 26.
- ◆ Provided internal and external training on civil rights program compliance at events including the Annual DBE Conference, Regional Directors Brown Bag Lunch Series, Central Region Spring Fling, Northern Region and Southcoast Region Construction season kick-off.
- ◆ Hosted quarterly orientations for new DBE program participants.
- ◆ Continued implementing a race-neutral DBE program while meeting all requirements specified in the FHWA conditional approval for transition to a race-neutral DBE program dated April 17, 2015.
- ◆ Received continued funding support for OJT and DBE support services and Alaska Construction Career Day (ACCD) from FHWA.
- ◆ Held two ACCD events, including one maritime event at the Ketchikan shipyard. These events create and increase awareness among youth to explore and consider careers in construction. The youth include high school students from over 30 schools and eight school districts statewide.
- ◆ Successfully completed Contractor Compliance Reviews as mandated by FHWA.
- ◆ Hosted the annual DBE Conference and 'Future Connections' in participation with Associated General Contractors of Alaska as networking opportunities for prime contractors and DBEs.
- ◆ Crafted and implemented the ADA Transition Plan for public right-of-way with an updated plan containing new data pertaining to compliant and non-compliant facilities within the DOT&PF right-of-way released in January 2019.
- ◆ Continued efforts toward Title VI/ADA Compliance for Federal Transit Administration (FTA)/Alaska Community Transit sub-recipients.

Contract Compliance Reviews (CCRs)

Contract Compliance Reviews (CCRs) are an essential activity for ensuring compliance with DBE regulations. A CCR is a systematic, objective, and comprehensive review of the employment practices of ADOT&PF contractors and subcontractors. CCRs are conducted by the CRO to determine whether DOT&PF contractors and subcontractors are complying with their Equal Employment Opportunity (EEO) and Affirmative Action (AA) contractual obligations. Site visits are conducted to monitor DBE participation and prompt payment, as required in Section 26.29, and consist of meeting with contractors on-site to examine their EEO objectives, reviewing files and data, conducting project worksite interviews, and preparing a final review and analysis of collected information. Review dates are coordinated with contractors and scheduled during their peak employment periods. This allows time to correct deficiencies, should any be found. In addition, the CRO reviews special training provisions and assesses whether contractors are meeting or exceeding the DBE goal or commitment for the project.

3.8 NONDISCRIMINATION IN CONTRACTING

Alaska statutes that cover nondiscrimination in contracting remained intact during the study period and have not experienced major revisions since the 2014 disparity study. In particular, Alaska statutes provide that, “The commissioner [of state procurement] shall adopt regulations pertaining to... (16) the elimination and prevention of discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.”¹⁵⁵ In keeping with this requirement, Alaska state regulations provide that, “[s]ource selection may not be based on discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.”¹⁵⁶ Similarly, the Alaska Procurement Regulations provide that,

(a) Award of a bid may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder. A bid shall be evaluated to determine whether the bidder responds to the provisions, such as goals or financial incentives, established in the invitation to bid in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability....

*(j) An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. A proposal shall be evaluated to determine whether the offeror responds to the provisions, including goals and financial incentives, established in the request for proposals in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.*¹⁵⁷

In addition, the Alaska regulations provide for the contemplation of goals to help alleviate discrimination in contracting. In particular, the Alaska regulations provide that,

*(a) An invitation to bid must include ... (6) provisions, such as goals or financial incentives, established to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.*¹⁵⁸

(e) An invitation to bid must require the bidder to submit evidence that the bidder’s subcontractor work will be allocated to meet provisions, such as goals or financial incentives, established in the bid to eliminate and prevent discrimination in state

¹⁵⁵ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁵⁶ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁵⁷ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁵⁸ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

*contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.*¹⁵⁹

Finally, the DOT&PF states that its policy is to “[e]nsure nondiscrimination in the award and administration of USDOT assisted contracts.”¹⁶⁰

3.9 FINANCIAL ASSISTANCE PROGRAMS

DOT&PF FINANCIAL ASSISTANCE PROGRAMS

The 2014 disparity documented that DOT&PF does not maintain a lending assistance program for DBEs but there are financial services that DBEs could access during the study period. The U.S. DOT supports a Short-Term Lending Program (STLP). The STLP provides access to working capital for DBEs and other small firms through revolving lines of credit guaranteed by the STLP. The lines of credit can be used for “transportation-related contracts.” The accounts receivables for these contracts constitute the collateral. Credit lines can reach \$750,000 and cannot exceed five years. The Denali Alaskan Credit Union has served as the participating lender in the program. There are a number of other loan programs maintained by the state of Alaska and other nonprofit organizations; some of these are discussed below.

PROMPT PAYMENT

While prompt payment is not considered lending assistance, prompt payment is an important part of the financial conditions faced by firms. In addition, it is Alaska state policy to make prompt payments to prime contractors on public works and public construction contracts.¹⁶¹ Moreover, Alaska statutes provide the contract between primes and subcontractors contain a clause requiring that,

*the prime contractor to pay: (1) the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid; (2) the subcontractor all retainage due under the subcontract within eight working days after final payment is received from the state or political subdivision or after the notice period under AS 36.25.020 (b) expires, whichever is later.*¹⁶²

The Alaska prompt payment statute allows for interest on the amounts not paid. Prompt payment is also required under the federal DBE regulations. The federal regulations provide for prompt payment of retainage within 30 days of satisfactory completion by the subcontractor.

LOAN PROGRAMS

The **U.S. Small Business Administration (SBA)** maintains the 504 Loan Program and the 7(a) Loan Guarantee Program. Loans guaranteed by SBA range from small to large and can be used for most business purposes, including long-term fixed assets and capital investments. SBA has also introduced Coronavirus

¹⁵⁹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁶⁰ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁶¹ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

¹⁶² DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc.

Funding Options that align with the CARES Act that provide over \$300 billion in relief for workers and small businesses. The SBA's Community Express program targets firms in low- and moderate-income neighborhoods for loans up to \$250,000. The program provides loan guarantees that follow the SBA 7(a) program.

The **Alaska Division of Economic Development** has a Micro Loan Fund for secured loans up to \$35,000 for one individual.¹⁶³ The maximum loan term is 12 years. The loans can be used for working capital, equipment, construction, or other commercial purposes for Alaska businesses.

The **Kenai Peninsula Economic Development District (KEDEDD)** has a Micro Loan Fund for loans between \$1,000 and \$25,000 to provide financing for small businesses for which other types of financing might not be available.¹⁶⁴

3.10 BONDING ASSISTANCE

As highlighted in the 2014 disparity study, the state of Alaska requires performance bonds and payment bonds on contracts for public buildings or works exceeding \$100,000.¹⁶⁵ At present, DOT&PF does not maintain a direct bonding assistance program. As mentioned earlier the U.S. DOT STLP does have a bond component. DOT&PF has held bonding workshops, including a two-day workshop in Anchorage in December 2012 with the U.S. DOT, the Surety & Fidelity Association of America, Associated General Contractors (AGC), FAA, Granite Construction, and the Northwest Small Business Transportation Resource Center on how firms can become bond ready. DOT&PF has also listed bonding companies in the CRO quarterly online newsletter, the *Transporter*.

3.11 MANAGEMENT AND TECHNICAL ASSISTANCE

DOT&PF MANAGEMENT AND TECHNICAL ASSISTANCE

DBE firms participating in FHWA funded contracts have access to DBE support services provided by the CRO including training and technical assistance to enhance business operations. The FHWA DBE Program brochure provides an overview of support services, bidding opportunities, DBE responsibilities, contracting process and other resources. Technical assistance resources include:

- ♦ Training, workshops, professional assistance, professional memberships, software, and other means for facilitating DBEs working on FHWA projects. DBEs have been reimbursed up to 50 percent of the costs. The reimbursement limit is \$1,000 per DBE firm in a calendar year.
- ♦ The electronic transmission of project plans.

¹⁶³ <http://www.commerce.state.ak.us/ded/fin/microloan.cfml>.

¹⁶⁴ <http://www.kpedd.org/>.

¹⁶⁵ AS 36.25.010. Bonds of Contractors for Public Buildings or Works.

- ◆ The 50% Reimbursement Program designed to offset DBE business costs which may impact DBE competitiveness.
- ◆ The Map to Success Specialized Assistance Program which provides one-to-one consultation with DBEs. In the Map to Success program, DBEs meet with counselors, primarily from the Small Business Development Center (SBDC), who provide an analysis of their business infrastructure to identify strengths and weaknesses. This analysis is supplemented with financial and technical support.
- ◆ The “Tools in the Toolbox” workshops which cover the introduction to DOT&PF procurement, bonding, to government contracting, and contract law.
- ◆ Collaboration with other management and technical assistance providers in Alaska, particularly the Procurement Technical Assistance Center (PTAC), the SBDC, and the Minority Business Development Agency Center (MBDC). Other PTAC, SBDC, and MBDC business development efforts are discussed below.

OTHER BUSINESS DEVELOPMENT ASSISTANCE PROGRAMS

Several business organizations and local centers also support business development in DOT&PF and the state of Alaska.

Procurement Technical Assistance Center. The national PTAC was established in 1985 to assist businesses selling to the U.S. Department of Defense (DOD). The Alaska PTAC was established in 1986. Last year Alaska PTAC assisted more than 500 Alaska owned businesses who were awarded more than \$2.2 billion in federal, state, local and commercial contracts. Training and technical assistance is provided on contracts and opportunities at the federal, state, and local government levels.¹⁶⁶

Small Business Development Centers. The Alaska SBDC was started in 1986 to assist small businesses in the areas of start-up, expansion, organizational structure, and management and provides resources, advice, and assistance to help small businesses grow. The SBDC Network program provides publications and free counseling primarily through a network of six SBDCs. The Alaska SBDC is funded by the U.S. SBA, the state of Alaska, partner municipal governments, and other sponsors throughout the state.¹⁶⁷ SBDC workshops have covered government contracting, commercial leases, credit, and social media, amongst other topics. This statewide SBDC program is hosted by the University of Alaska. DBEs are reimbursed 90 percent of the cost of SBDC business-related classes. DBEs must be actively pursuing DOT&PF FHWA projects or be in the first year of certification to qualify for reimbursement of the SBDC classes.

Department of Commerce, Community, and Economic Development. Through the Division of Economic Development direct lending is provided in industries and areas of the state not adequately serviced by the private sector. Resources are provided to finance business startup and business expansion.¹⁶⁸

¹⁶⁶ <https://ptacalaska.org>, 2020.

¹⁶⁷ DOT&PF Disparity Study Final Report, August 18, 2014 MGT of America, Inc

¹⁶⁸ www.commerce.alaska.gov, 2020.

Minority Business Development Center. The Alaska MBDC is operated by the Native American Contractors Association and is located in Anchorage. The Alaska MBDC helps ANCs, tribal enterprises, and other minority-owned businesses to access contracts, markets, and capital.

3.12 OUTREACH

Outreach is a key strategy in creating awareness of the DBE Program and increasing DBE participation. DOT&PF has been hosting an annual statewide DBE conference for many years; it is one of several outreach activities which have proven to be effective. This annual conference offers business development information such as bonding, tax strategies, financing for growth, and DOT&PF procurement updates. The conference is free for certified DBE attendees and SBEs. The annual conference has functioned as a point of contact between DOT&PF and potential DBEs.

The DOT&PF CRO, in association with the AGC of Alaska also hosted Future Connections designed to create more visibility and awareness of opportunities for DBEs through networking with prime contractors. Over the reporting period, outreach events have attracted a diverse group of supporters and participants.

DOT&PF's other DBE outreach efforts have included:

- ◆ Hosting quarterly orientations for new DBEs.
- ◆ ACCD events to increase awareness among youth to consider careers in construction.
- ◆ Conducting annual surveys of DBEs.
- ◆ Planning pre-bid conferences.
- ◆ Publishing the quarterly newsletter, *Transporter*, which includes notification of forthcoming projects.
- ◆ Maintaining the DOT&PF website, which contains extensive information on DBE certification, news, DBE program documents, resource documents, resource links, vendor outreach, bidder registration forms, supportive services, SBE program, contracts, DBE goals, DBE utilization, procurement manuals, GFE forms, and DOT&PF contracting information.
- ◆ Coordinating DBE informational meetings discussing legal, policy, and procedural changes throughout Alaska through the CRO Supportive Services Coordinator.
- ◆ Publishing an online DBE directory.

3.13 SUMMARY

Similar to the 2014 disparity study the policy review for this study focused primarily on construction projects and professional service agreements funded by FHWA, FAA, and FTA. Based on MGT's review DOT&PF has detailed policies that have undergone few major changes since the 2014 disparity study. The source documents reviewed by MGT and resources/information on DOT&PF's website provide ample

guidance to DOT&PF staff and firms interested in doing business with DOT&PF. DOT&PF has a well-established DBE Program with clearly defined policies and regulations related to DBE participation and very knowledgeable staff to ensure compliance with DBE regulations.

In conducting the policy review, MGT was encouraged by the progress made utilizing the results of the 2014 disparity study to strengthen practices, processes, and systems to facilitate DBE participation. DOT&PF has been proactive in addressing findings and recommendations in the 2014 disparity study, particularly related to executing strategies to increase DBE participation which can be directly attributed to staff's commitment and dedication. Also, it is worth noting the uniqueness of each Region means there is no "one size fits all" across the spectrum of procurement/contracting and DBE participation. However, what is common across each region is the understanding and acceptance of policies and regulations and adherence to them on a consistent basis.

CHAPTER 4. MARKET AREA AND
UTILIZATION ANALYSES

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



Chapter 4 presents the results of MGT’s market area and utilization analyses of firms used on DOT&PF Construction and Professional Services projects awarded between October 1, 2014 to September 30, 2019 (FFY2015-FFY2019). The analyses show the project awards based on the combination prime only and subcontractor only awards. The analyses were based on projects that were funded by the following United States Department of Transportation (U.S. DOT) modal administrations: the FHWA, the FAA, and the FTA.

CHAPTER SECTIONS



- 4.1 Chapter Definitions
- 4.2 Data Collection and Management
- 4.3 Market Area Analysis
- 4.4 Utilization Analysis
- 4.5 Conclusion

The following section, **Chapter Definitions**, presents the definitions to key terms that are used in this chapter.

4.1 CHAPTER DEFINITIONS

Business Ownership Classification. To understand the analyses presented in this study, it is important to define and understand the differences between M/W/DBE and certified DBE firms. The following section provides the study definitions for M/W/DBE, certified DBE, non-M/W/DBE, and non-DBE firms.

- ◆ **M/W/DBE Firms.** For the purposes of this study, M/W/DBE firms are firms owned by minorities or women regardless of DBE certification status. Therefore, M/W/DBE firms include all identified minorities- and women-owned firms (non-DBE certified and DBE certified). MGT used this approach in analyzing the utilization and availability of firms and to review disparities, if any. Furthermore, courts have accepted disparity studies based on race, ethnicity, and gender of the business owner as opposed to DBE certification status.
 - M/W/DBE firms were defined as firms that are at least 51 percent owned or controlled by members of the following groups:
 - **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
 - **Asian Indian/Pacific Islanders:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
 - **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
 - **American Indians/Alaska Natives:** U.S. citizens or lawfully admitted permanent residents who have origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment. This category includes people who indicate their race(s) as “American Indian or Alaska Native” or report an enrolled or principal tribe, such as Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

- **Alaska Native Corporations (ANCs):** The following special rules apply to the certification of firms related to ANCs in accordance with 49 CFR Part 26.73(i) of Subpart D:
 - (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
 - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
 - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority if both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
 - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
- **Alaska Tribal Corporations:** The following rules apply to Tribal Corporations in accordance with 49 CFR Part 26.5:
 - Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.
 - Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.
- **Nonminority Woman (Female):** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white woman.

Minority women- and male-owned firms were classified and assigned to their corresponding minority groups. For example, a Hispanic American woman- or Hispanic American male-owned firm was assigned to the Hispanic American-owned firm minority group.
- ♦ **Certified DBE Firms.** Certified DBE firms are businesses certified by DOT&PF’s Civil Rights Office (CRO). This means that the certified DBE firms met the eligibility criteria stated in 49 CFR Part 26, which includes:
 - Business status, including size.
 - Social and economic disadvantage.
 - Business ownership classification.

- Independence.
- Management and control.

Since the Federal DBE Program requires DOT&PF to track the utilization of certified DBE firms, MGT staff also conducted separate utilization analyses on certified DBE firms. However, it should be noted that MGT does not conduct availability or disparity analyses separately for certified DBE firms and, therefore, is not presented in this study. MGT proposed annual DBE goals for DOT&PF by transportation mode for the upcoming period. The methodology for calculating annual DBE goals is presented in **Appendix X**.

- ◆ **Non-M/W/DBE Firms.** Firms that were identified as nonminority male or majority-owned were classified as non-M/W/DBE firms. If there was no indication of business ownership, these firms were also classified as non-M/W/DBE firms.
- ◆ **Non-DBE Certified Firms.** When MGT examined the utilization of certified DBE firms, firms that were identified as not being certified as a DBE were classified as non-DBE certified firms.

Funding Modals. Alaska is a multi-modal state with DOT&PF funded transportation provided through highways, airports, public transit, passenger/vehicle ferries, and rail. The types of federally assisted transportation projects analyzed in this study were based on the three U.S. DOT modal administrations: the FHWA, the FAA, and the FTA. The analyses focused on these modal administrations since the federal government requires state and local agencies to implement a Federal DBE Program if they receive U.S. DOT funds for transportation projects from these modal administrations.

Table 4-1 shows the total combined dollars awarded for construction and professional services projects by the three funding modals for the study period. **Table 4-1** shows that 76.41 percent of the dollars awarded during the study period were based on projects that received FHWA funding. Since much of the funding came from the FHWA, Chapter 4 and Chapter 5 (Availability and Disparity Analyses) presents the analyses based on the three funding modals combined, as well as separate analyses on FHWA-funded projects. Corresponding analyses for FAA- and FTA-funded projects are shown in Appendix A and are separately referenced for each set of applicable analyses.

TABLE 4-1. AWARD DOLLARS BY U.S. DOT FUNDING MODALS

Modals	(\$)	(%)
FHWA	\$1,935,963,662.15	76.41%
FAA	\$596,998,915.43	23.56%
FTA	\$672,155.23	0.03%
TOTAL	\$2,533,634,732.81	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: The award dollars presented in this exhibit are based on the overall market area.

Market Area Methodology. To establish the appropriate geographic boundaries for the study’s analyses, an overall market area was established. The geographic units (such as boroughs or states) are based on the following considerations: 1) the courts have accepted the use of standard geographic units in conducting equal employment opportunity and disparity studies; 2) geographic units are externally

determined, so there are no subjective determinations; and 3) U.S. Census and other federal agencies routinely collect data by geographic unit. The following presents the methodology used to determine the overall market area and relevant market area.

- ♦ **Overall Market Area Analyses.** To determine the market area and to establish the extent, to which DOT&PF utilized firms, MGT staff reviewed the geographic location by using MGT's Zone Improvement Plan (ZIP) Code Database of each firm conducting business with DOT&PF during the study period. Once the firms' geographic locations were identified, all boroughs (for firms located in the state of Alaska) and counties (for firms located outside of the state of Alaska) where dollars were awarded were analyzed and referred to the overall market area for each business category. The overall market analyses present the results based on firms located inside the state of Alaska and outside the state of Alaska. The overall market area results by business category (based on all three funding modals) are presented in Section 3 of this chapter.
- ♦ **Relevant Market Area Analyses.** Once the overall market was established, the relevant market area was determined for each of the business categories. The firm's geographic location that received the most dollars, all of which totaled at least 75 percent¹⁶⁹ of the overall market area, were identified. The relevant market area was determined to be the state of Alaska and thus the analyses presented in this report, such as utilization, availability, anecdotal, and disparity were based on the state of Alaska. The relevant market analyses are presented in **Section 4.3** of this chapter.

Study Period. MGT analyzed U.S. DOT-funded Construction and Professional Services projects awarded between October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).

4.2 DATA COLLECTION AND MANAGEMENT

MGT conducted data assessment interviews with key DOT&PF staff knowledgeable about the prime contract and subcontract data in order to identify the most appropriate data sources to use for the study. Based on the data assessment interviews and follow-up discussions with DOT&PF staff, it was agreed that in order to collect the most comprehensive sets of data, electronic data would be extracted from DOT&PF's BizTrak data management system, as well as DOT&PF headquarters procurement system. Next, MGT staff compiled and reconciled the sets of data in order to address potential data gaps, such as projects awarded by regions that were not maintained in BizTrak. Once the data gaps were addressed, MGT staff developed a master and compiled set of data, which hereafter is referred to as the Master Contract Database. MGT staff submitted the Master Contract Database to DOT&PF staff for review and feedback. As part of the review process, DOT&PF staff distributed the data to the DOT&PF staff located in the three DOT&PF regions. MGT staff incorporated DOT&PF staff feedback and finalized the Master Contract Database.

¹⁶⁹ MGT uses the "75 percent rule" to determine the relevant market area. This rule is generally accepted in antitrust cases. In another relevant case, *James C. Jones v. New York County Human Resources Administration*, 528 F.2d 696 (.2d Cir. 1976), the court accepted less than 100 percent of the data when it was reasonable to assume that the missing data would not significantly change the results of the analysis.

4.3 MARKET AREA ANALYSES

As mentioned in the **Section I, Chapter Definitions**, the utilization analyses are based on the relevant market area, which was determined to be the state of Alaska. The subsequent analyses present MGT’s utilization analyses of firms on Construction and Professional Services projects awarded by DOT&PF during the study period. The awards data included within this analysis encompass both (1) dollars awarded to primes located within the market area (excluding all subcontracting awards, or “pure primes”); (2) dollars allocated to subcontractors located within the market area, independent of their respective prime contractor location; and (3) subrecipients.

Table 4-2 presents the market area analyses for each business category based on the three funding modals analyzed in this study. **Table 4-2** presents the study’s relevant market area for DOT&PF, which is the state of Alaska. At a total level, 98.97 percent of dollars went to firms located in the state of Alaska. About 99.10 percent of the construction award dollars went to firms located in the state of Alaska. For professional services, 96.91 percent went to firms located in the state of Alaska.

TABLE 4-2. MARKET AREA ANALYSIS,
FUNDING MODALS COMBINED: FHWA, FAA, FTA

LOCATION	ALL	Construction	Professional Services
	(\$)	(\$)	(\$)
Inside Alaska	\$2,507,663,763.40	\$2,369,019,048.39	\$138,644,715.01
Outside Alaska	\$25,970,969.41	\$21,546,501.80	\$4,424,467.61
TOTAL	\$2,533,634,732.81	\$2,390,565,550.19	\$143,069,182.62
LOCATION	ALL	Construction	Professional Services
	(%)	(%)	(%)
Inside Alaska	98.97%	99.10%	96.91%
Outside Alaska	1.03%	0.90%	3.09%
TOTAL	100.00%	100.00%	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014, to September 30, 2019.

Table 4-3 presents the market area analysis for FHWA-funded projects awarded by DOT&PF. The table shows 98.86 percent of dollars went to firms located in the relevant market area. The table further shows that in the study’s relevant market area, 98.99 percent of FHWA-funded construction projects were awarded to firms located in the state of Alaska. As far as FHWA-funded professional services projects, 96.51 went to firms located in the state of Alaska.

TABLE 4-3. MARKET AREA ANALYSIS,
FUNDING MODAL: FHWA

LOCATION	ALL	Construction	Professional Services
	(\$)	(\$)	(\$)
Inside Alaska	\$1,913,896,558.35	\$1,815,366,478.15	\$98,530,080.20
Outside Alaska	\$22,067,103.80	\$18,504,215.80	\$3,562,888.00
TOTAL	\$1,935,963,662.15	\$1,833,870,693.95	\$102,092,968.20
LOCATION	ALL	Construction	Professional Services
	(%)	(%)	(%)
Inside Alaska	98.86%	98.99%	96.51%
Outside Alaska	1.14%	1.01%	3.49%
TOTAL	100.00%	100.00%	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: Refer to **Appendix A, Tables A-1 and A-2** for the corresponding results for FAA- and FTA-funded projects.

4.4 UTILIZATION ANALYSIS

As mentioned in the **Section I, Chapter Definitions**, the utilization analyses are based on the relevant market area, which was determined to be the state of Alaska. The subsequent analyses present MGT's utilization analyses of firms on Construction and Professional Services projects awarded by DOT&PF during the study period. The awards data included within this analysis encompass both (1) dollars awarded to primes located within the market area (excluding all subcontracting awards, or "pure primes"); (2) dollars allocated to subcontractors located within the market area, independent of their respective prime contractor location; and (3) subrecipients.

Similar to the market area analyses, MGT first conducted the utilization analyses based on the three funding modals combined. **Table 4-4** presents the total awarded by business category analyzed for the study. The next series of exhibits present the results of MGT's utilization analyses on prime contractor, subcontractor, and subrecipient construction and professional services projects. **Table 4-4** presents the total contract award dollars by business category that were analyzed for the study.

TABLE 4-4. TOTAL AWARD DOLLARS BY BUSINESS CATEGORY
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS CATEGORY	CONTRACT AWARD	
	Dollars (\$)	Percent (%)
Construction	\$2,369,019,048.39	94.47%
Professional Services	\$138,644,715.01	5.53%
TOTAL	\$2,507,663,763.40	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

TABLE 4-5. UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY REGION BY BUSINESS OWNERSHIP CLASSIFICATION, FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE, TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms								
African Americans	\$937,283.98	0.08%	\$19,905,181.56	2.55%	\$0.00	0.00%	\$20,842,465.54	0.88%
Alaska Native Corporation	\$52,163,103.01	4.26%	\$54,057,990.22	6.92%	\$1,501,742.83	0.41%	\$107,722,836.06	4.55%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$11,822,450.89	0.97%	\$17,117,593.91	2.19%	\$12,974,236.81	3.57%	\$41,914,281.61	1.77%
Asian Indian/Pacific Islanders	\$53,682.00	0.00%	\$0.00	0.00%	\$6,353,673.50	1.75%	\$6,407,355.50	0.27%
Hispanic Americans	\$6,432,208.03	0.53%	\$115,503,204.82	14.78%	\$43,958.75	0.01%	\$121,979,371.60	5.15%
Nonminority Women	\$74,621,830.29	6.10%	\$27,915,825.43	3.57%	\$17,479,831.12	4.81%	\$120,017,486.84	5.07%
Total M/W/DBE Firms	\$146,030,558.20	11.93%	\$234,499,795.94	30.00%	\$38,353,443.01	10.55%	\$418,883,797.15	17.68%
Non-M/W/DBE Firms	\$1,077,888,125.97	88.07%	\$547,192,795.53	70.00%	\$325,054,329.74	89.45%	\$1,950,135,251.24	82.32%
TOTAL	\$1,223,918,684.17	100.00%	\$781,692,591.47	100.00%	\$363,407,772.75	100.00%	\$2,369,019,048.39	100.00%
DBE Certified Firms								
African Americans	\$927,878.98	0.08%	\$0.00	0.00%	\$0.00	0.00%	\$927,878.98	0.04%
Alaska Native Corporation	\$26,418,865.26	2.16%	\$41,885,392.52	5.36%	\$871,140.00	0.24%	\$69,175,397.78	2.92%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$5,377,612.30	0.44%	\$5,035,041.01	0.64%	\$4,807,922.75	1.32%	\$15,220,576.06	0.64%
Asian Indian/Pacific Islanders	\$53,682.00	0.00%	\$0.00	0.00%	\$996,616.50	0.27%	\$1,050,298.50	0.04%
Hispanic Americans	\$3,284,863.87	0.27%	\$1,036,680.00	0.13%	\$5,112.25	0.00%	\$4,326,656.12	0.18%
Nonminority Women	\$51,140,464.74	4.18%	\$21,609,341.24	2.76%	\$289,210.00	0.08%	\$73,039,015.98	3.08%
Total DBE Certified Firms	\$87,203,367.15	7.12%	\$69,566,454.77	8.90%	\$6,970,001.50	1.92%	\$163,739,823.42	6.91%
Non-DBE Certified Firms	\$1,136,715,317.02	92.88%	\$712,126,136.70	91.10%	\$356,437,771.25	98.08%	\$2,205,279,224.97	93.09%
TOTAL	\$1,223,918,684.17	100.00%	\$781,692,591.47	100.00%	\$363,407,772.75	100.00%	\$2,369,019,048.39	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Table 4-6 shows the utilization of prime contractors, subcontractors, and subrecipients on construction projects (all three funding modals combined) for each year of the study period by M/W/DBE group. In terms of percentage and year, M/W/DBE utilization was higher in FFY2017 (23.97%) than any other year of the study period followed by FFY2016 (20.07%). Similar to the utilization of M/W/DBE firms, the utilization of DBE certified firms was higher in FFY2017 (8.76%).

TABLE 4-6. UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY FEDERAL FISCAL YEAR
 BY BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2015		2016		2017		2018		2019		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms												
African Americans	\$1,598,373.60	0.36%	\$1,752,009.48	0.41%	\$12,184,737.00	2.39%	\$1,666,643.50	0.27%	\$3,640,701.96	1.03%	\$20,842,465.54	0.88%
Alaska Native Corporation	\$23,076,296.29	5.16%	\$27,880,927.19	6.47%	\$26,746,424.74	5.24%	\$20,411,901.97	3.25%	\$9,607,285.87	2.73%	\$107,722,836.06	4.55%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$9,317,168.25	2.08%	\$7,911,515.46	1.84%	\$2,519,536.00	0.49%	\$11,940,725.98	1.90%	\$10,225,335.92	2.90%	\$41,914,281.61	1.77%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$1,491,819.00	0.35%	\$930,258.50	0.18%	\$1,097,970.00	0.17%	\$2,887,308.00	0.82%	\$6,407,355.50	0.27%
Hispanic Americans	\$925,840.50	0.21%	\$31,602,630.62	7.34%	\$41,728,801.86	8.17%	\$18,309,454.30	2.91%	\$29,412,644.32	8.35%	\$121,979,371.60	5.15%
Nonminority Women	\$22,291,841.86	4.99%	\$15,770,084.49	3.66%	\$38,336,654.46	7.51%	\$30,528,356.10	4.86%	\$13,090,549.93	3.72%	\$120,017,486.84	5.07%
Total M/W/DBE Firms	\$57,209,520.50	12.79%	\$86,408,986.24	20.07%	\$122,446,412.56	23.97%	\$83,955,051.85	13.36%	\$68,863,826.00	19.55%	\$418,883,797.15	17.68%
Non-M/W/DBE Firms	\$389,927,648.84	87.21%	\$344,227,096.73	79.93%	\$388,296,731.12	76.03%	\$544,222,781.98	86.64%	\$283,460,992.57	80.45%	\$1,950,135,251.24	82.32%
TOTAL	\$447,137,169.34	100.00%	\$430,636,082.97	100.00%	\$510,743,143.68	100.00%	\$628,177,833.83	100.00%	\$352,324,818.57	100.00%	\$2,369,019,048.39	100.00%
DBE Certified Firms												
African Americans	\$650,890.00	0.15%	\$276,988.98	0.06%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$927,878.98	0.04%
Alaska Native Corporation	\$9,310,613.10	2.08%	\$12,565,022.54	2.92%	\$20,379,151.96	3.99%	\$17,313,324.31	2.76%	\$9,607,285.87	2.73%	\$69,175,397.78	2.92%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$3,214,801.00	0.72%	\$3,888,803.15	0.90%	\$2,216,281.00	0.43%	\$3,521,733.58	0.56%	\$2,378,957.33	0.68%	\$15,220,576.06	0.64%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$930,258.50	0.18%	\$0.00	0.00%	\$120,040.00	0.03%	\$1,050,298.50	0.04%
Hispanic Americans	\$751,760.00	0.17%	\$593,013.12	0.14%	\$2,104,016.00	0.41%	\$550,372.00	0.09%	\$327,495.00	0.09%	\$4,326,656.12	0.18%
Nonminority Women	\$13,852,833.04	3.10%	\$8,418,353.09	1.95%	\$19,111,963.48	3.74%	\$21,613,951.75	3.44%	\$10,041,914.62	2.85%	\$73,039,015.98	3.08%
Total DBE Certified Firms	\$27,780,897.14	6.21%	\$25,742,180.88	5.98%	\$44,741,670.94	8.76%	\$42,999,381.64	6.85%	\$22,475,692.82	6.38%	\$163,739,823.42	6.91%
Non-DBE Certified Firms	\$419,356,272.20	93.79%	\$404,893,902.09	94.02%	\$466,001,472.74	91.24%	\$585,178,452.19	93.15%	\$329,849,125.75	93.62%	\$2,205,279,224.97	93.09%
TOTAL	\$447,137,169.34	100.00%	\$430,636,082.97	100.00%	\$510,743,143.68	100.00%	\$628,177,833.83	100.00%	\$352,324,818.57	100.00%	\$2,369,019,048.39	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Table 4-7 shows the utilization of prime contractors, subcontractors, and subrecipients on FHWA-funded construction projects by region. Statewide, M/W/DBE firms received 17.47 percent of the dollars awarded on FHWA-funded construction projects. The utilization of nonminority women-owned firms (6.07%) was higher than any other M/W/DBE group followed by Hispanic American-owned firms (5.71%) and Alaska Native Corporations (2.87%). In terms of percentage of dollars by region, the utilization of M/W/DBE firms on FHWA-funded construction contracts were higher in the Northern Region (29.63%) followed by the Central Region (11.57%). In terms of DBE certified firms and percentage of dollars by region, the utilization of DBE certified firms was higher in the Central Region (7.82%). The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded construction projects are presented separately in Appendix A, Table A-3 and Table A-4.

TABLE 4-7. UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY REGION BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE,TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms								
African Americans	\$937,283.98	0.10%	\$19,045,281.56	3.18%	\$0.00	0.00%	\$19,982,565.54	1.10%
Alaska Native Corporation	\$24,799,317.70	2.77%	\$25,770,255.72	4.31%	\$1,501,742.83	0.47%	\$52,071,316.25	2.87%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$7,122,829.89	0.80%	\$5,936,083.40	0.99%	\$12,912,933.81	4.01%	\$25,971,847.10	1.43%
Asian Indian/Pacific Islanders	\$524.00	0.00%	\$0.00	0.00%	\$5,367,703.50	1.67%	\$5,368,227.50	0.30%
Hispanic Americans	\$3,251,499.87	0.36%	\$100,288,720.82	16.76%	\$43,958.75	0.01%	\$103,584,179.44	5.71%
Nonminority Women	\$67,453,608.79	7.54%	\$26,290,447.52	4.39%	\$16,460,127.51	5.11%	\$110,204,183.82	6.07%
Total M/W/DBE Firms	\$103,565,064.23	11.57%	\$177,330,789.02	29.63%	\$36,286,466.40	11.27%	\$317,182,319.65	17.47%
Non-M/W/DBE Firms	\$791,206,565.44	88.43%	\$421,216,959.23	70.37%	\$285,760,633.83	88.73%	\$1,498,184,158.50	82.53%
TOTAL	\$894,771,629.67	100.00%	\$598,547,748.25	100.00%	\$322,047,100.23	100.00%	\$1,815,366,478.15	100.00%
DBE Certified Firms								
African Americans	\$927,878.98	0.10%	\$0.00	0.00%	\$0.00	0.00%	\$927,878.98	0.05%
Alaska Native Corporation	\$14,528,939.51	1.62%	\$13,597,658.02	2.27%	\$871,140.00	0.27%	\$28,997,737.53	1.60%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$2,931,611.80	0.33%	\$456,307.40	0.08%	\$4,746,619.75	1.47%	\$8,134,538.95	0.45%
Asian Indian/Pacific Islanders	\$524.00	0.00%	\$0.00	0.00%	\$996,616.50	0.31%	\$997,140.50	0.05%
Hispanic Americans	\$3,031,325.87	0.34%	\$976,930.00	0.16%	\$5,112.25	0.00%	\$4,013,368.12	0.22%
Nonminority Women	\$48,535,920.94	5.42%	\$21,217,809.95	3.54%	\$286,858.00	0.09%	\$70,040,588.89	3.86%
Total DBE Certified Firms	\$69,956,201.10	7.82%	\$36,248,705.37	6.06%	\$6,906,346.50	2.14%	\$113,111,252.97	6.23%
Non-DBE Certified Firms	\$824,815,428.57	92.18%	\$562,299,042.88	93.94%	\$315,140,753.73	97.86%	\$1,702,255,225.18	93.77%
TOTAL	\$894,771,629.67	100.00%	\$598,547,748.25	100.00%	\$322,047,100.23	100.00%	\$1,815,366,478.15	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded construction projects are presented separately in Appendix A, Table A-3 and Table A-4.

Table 4-8 shows the utilization of prime contractors, subcontractors, and subrecipients on FHWA-funded construction projects for each year of the study period. M/W/DBE utilization was higher in FFY2017 (23.71%) than any other year of the study period followed by FFY2019 (22.85%). The utilization of DBE certified firms was highest in FFY2018 at 9.01 percent. The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in Appendix A, Table A-5 and Table A-6.

TABLE 4-8. UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY FEDERAL FISCAL YEAR
BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2015		2016		2017		2018		2019		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms												
African Americans	\$1,598,373.60	0.44%	\$1,752,009.48	0.52%	\$11,827,837.00	2.90%	\$1,666,643.50	0.39%	\$3,137,701.96	1.11%	\$19,982,565.54	1.10%
Alaska Native Corporation	\$14,484,172.04	3.96%	\$9,777,917.04	2.92%	\$3,568,876.99	0.88%	\$15,783,188.31	3.71%	\$8,457,161.87	3.00%	\$52,071,316.25	2.87%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$7,431,257.25	2.03%	\$6,546,427.46	1.95%	\$1,825,480.00	0.45%	\$2,247,602.80	0.53%	\$7,921,079.59	2.81%	\$25,971,847.10	1.43%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$1,491,819.00	0.45%	\$877,100.50	0.22%	\$112,000.00	0.03%	\$2,887,308.00	1.03%	\$5,368,227.50	0.30%
Hispanic Americans	\$925,840.50	0.25%	\$31,332,287.62	9.36%	\$41,565,695.00	10.21%	\$667,677.00	0.16%	\$29,092,679.32	10.33%	\$103,584,179.44	5.71%
Nonminority Women	\$20,576,447.97	5.62%	\$12,484,691.49	3.73%	\$36,897,812.76	9.06%	\$27,394,137.28	6.44%	\$12,851,094.32	4.56%	\$110,204,183.82	6.07%
Total M/W/DBE Firms	\$45,016,091.36	12.29%	\$63,385,152.09	18.93%	\$96,562,802.25	23.71%	\$47,871,248.89	11.25%	\$64,347,025.06	22.85%	\$317,182,319.65	17.47%
Non-M/W/DBE Firms	\$321,199,126.82	87.71%	\$271,522,290.20	81.07%	\$310,658,158.79	76.29%	\$377,558,107.53	88.75%	\$217,246,475.16	77.15%	\$1,498,184,158.50	82.53%
TOTAL	\$366,215,218.18	100.00%	\$334,907,442.29	100.00%	\$407,220,961.04	100.00%	\$425,429,356.42	100.00%	\$281,593,500.22	100.00%	\$1,815,366,478.15	100.00%
DBE Certified Firms												
African Americans	\$650,890.00	0.18%	\$276,988.98	0.08%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$927,878.98	0.05%
Alaska Native Corporation	\$1,303,813.85	0.36%	\$2,369,842.04	0.71%	\$1,656,595.46	0.41%	\$15,210,324.31	3.58%	\$8,457,161.87	3.00%	\$28,997,737.53	1.60%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$1,328,890.00	0.36%	\$2,784,715.15	0.83%	\$1,802,425.00	0.44%	\$1,762,132.80	0.41%	\$456,376.00	0.16%	\$8,134,538.95	0.45%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$877,100.50	0.22%	\$0.00	0.00%	\$120,040.00	0.04%	\$997,140.50	0.05%
Hispanic Americans	\$751,760.00	0.21%	\$593,013.12	0.18%	\$2,104,016.00	0.52%	\$321,634.00	0.08%	\$242,945.00	0.09%	\$4,013,368.12	0.22%
Nonminority Women	\$12,266,068.40	3.35%	\$8,413,806.09	2.51%	\$18,315,786.03	4.50%	\$21,042,380.75	4.95%	\$10,002,547.62	3.55%	\$70,040,588.89	3.86%
Total DBE Certified Firms	\$16,301,422.25	4.45%	\$14,438,365.38	4.31%	\$24,755,922.99	6.08%	\$38,336,471.86	9.01%	\$19,279,070.49	6.85%	\$113,111,252.97	6.23%
Non-DBE Certified Firms	\$349,913,795.93	95.55%	\$320,469,076.91	95.69%	\$382,465,038.05	93.92%	\$387,092,884.56	90.99%	\$262,314,429.73	93.15%	\$1,702,255,225.18	93.77%
TOTAL	\$366,215,218.18	100.00%	\$334,907,442.29	100.00%	\$407,220,961.04	100.00%	\$425,429,356.42	100.00%	\$281,593,500.22	100.00%	\$1,815,366,478.15	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in Appendix A, Table A-5 and Table A-6.

Table 4-9 shows the utilization of prime consultants, subconsultants, and subrecipients on professional services projects (all three funding modals combined) by region. Statewide, M/W/DBE firms received 17.38 percent of the professional services award dollars. The utilization of Alaska Native Corporations (6.68%) was higher than any M/W/DBE group. In terms of percentage of professional services award dollars and region, the utilization of M/W/DBE firms was higher in the Central Region (21.08%) than any other region. The utilization of DBE certified firms was highest in the Central Region (13.36%).

TABLE 4-9. UTILIZATION ANALYSIS OF PROFESSIONAL SERVICES PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY REGION BY BUSINESS OWNERSHIP CLASSIFICATION, FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE,TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms								
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$5,761,482.33	8.30%	\$2,008,979.68	4.32%	\$1,493,975.00	6.56%	\$9,264,437.01	6.68%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$5,969,734.95	8.60%	\$2,419,498.08	5.21%	\$602,243.00	2.64%	\$8,991,476.03	6.49%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%	\$14,775.00	0.03%	\$716,795.00	3.15%	\$731,570.00	0.53%
Nonminority Women	\$2,899,473.48	4.18%	\$1,779,911.90	3.83%	\$424,524.50	1.86%	\$5,103,909.88	3.68%
Total M/W/DBE Firms	\$14,630,690.76	21.08%	\$6,223,164.66	13.39%	\$3,237,537.50	14.22%	\$24,091,392.92	17.38%
Non-M/W/DBE Firms	\$54,771,292.80	78.92%	\$40,249,046.75	86.61%	\$19,532,982.54	85.78%	\$114,553,322.09	82.62%
TOTAL	\$69,401,983.56	100.00%	\$46,472,211.41	100.00%	\$22,770,520.04	100.00%	\$138,644,715.01	100.00%
DBE Certified Firms								
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$1,797,978.00	2.59%	\$0.00	0.00%	\$3,400.00	0.01%	\$1,801,378.00	1.30%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$5,725,898.95	8.25%	\$2,184,735.45	4.70%	\$567,475.00	2.49%	\$8,478,109.40	6.11%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%	\$14,775.00	0.03%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$1,751,106.35	2.52%	\$505,331.18	1.09%	\$103,979.00	0.46%	\$2,360,416.53	1.70%
Total DBE Certified Firms	\$9,274,983.30	13.36%	\$2,704,841.63	5.82%	\$674,854.00	2.96%	\$12,654,678.93	9.13%
Non-DBE Certified Firms	\$60,127,000.26	86.64%	\$43,767,369.78	94.18%	\$22,095,666.04	97.04%	\$125,990,036.08	90.87%
TOTAL	\$69,401,983.56	100.00%	\$46,472,211.41	100.00%	\$22,770,520.04	100.00%	\$138,644,715.01	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Table 4-10 shows the utilization of prime consultants, subconsultants, and subrecipients on professional services projects (all three funding modals combined) by federal fiscal year. M/W/DBE utilization was higher in FFY2015 (33.30%) than any other year of the study period followed by FFY2017 (20.22%). The utilization of DBE certified firms was highest in FFY2015 (17.56%).

TABLE 4-10. UTILIZATION ANALYSIS OF PROFESSIONAL SERVICES PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY FEDERAL FISCAL YEARS BY BUSINESS OWNERSHIP CLASSIFICATION FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2015		2016		2017		2018		2019		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms												
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$1,913,428.33	8.68%	\$2,068,465.68	9.25%	\$3,237,961.00	11.85%	\$1,372,466.00	3.48%	\$672,116.00	2.45%	\$9,264,437.01	6.68%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$3,829,480.95	17.36%	\$1,562,117.91	6.98%	\$1,353,476.12	4.95%	\$1,105,778.05	2.80%	\$1,140,623.00	4.16%	\$8,991,476.03	6.49%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$731,570.00	3.32%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$731,570.00	0.53%
Nonminority Women	\$869,628.60	3.94%	\$554,952.82	2.48%	\$936,310.61	3.43%	\$1,587,812.85	4.02%	\$1,155,205.00	4.22%	\$5,103,909.88	3.68%
Total M/W/DBE Firms	\$7,344,107.88	33.30%	\$4,185,536.41	18.71%	\$5,527,747.73	20.22%	\$4,066,056.90	10.30%	\$2,967,944.00	10.83%	\$24,091,392.92	17.38%
Non-M/W/DBE Firms	\$14,711,378.20	66.70%	\$18,179,265.13	81.29%	\$21,804,882.85	79.78%	\$35,427,426.92	89.70%	\$24,430,368.99	89.17%	\$114,553,322.09	82.62%
TOTAL	\$22,055,486.08	100.00%	\$22,364,801.54	100.00%	\$27,332,630.58	100.00%	\$39,493,483.82	100.00%	\$27,398,312.99	100.00%	\$138,644,715.01	100.00%
DBE Certified Firms												
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$0.00	0.00%	\$3,400.00	0.02%	\$1,711,679.00	6.26%	\$4,000.00	0.01%	\$82,299.00	0.30%	\$1,801,378.00	1.30%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$3,612,144.95	16.38%	\$1,507,542.00	6.74%	\$1,285,123.00	4.70%	\$1,034,627.45	2.62%	\$1,038,672.00	3.79%	\$8,478,109.40	6.11%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$14,775.00	0.07%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$245,559.10	1.11%	\$227,176.68	1.02%	\$190,700.00	0.70%	\$733,487.75	1.86%	\$963,493.00	3.52%	\$2,360,416.53	1.70%
Total DBE Certified Firms	\$3,872,479.05	17.56%	\$1,738,118.68	7.77%	\$3,187,502.00	11.66%	\$1,772,115.20	4.49%	\$2,084,464.00	7.61%	\$12,654,678.93	9.13%
Non-DBE Certified Firms	\$18,183,007.03	82.44%	\$20,626,682.86	92.23%	\$24,145,128.58	88.34%	\$37,721,368.62	95.51%	\$25,313,848.99	92.39%	\$125,990,036.08	90.87%
TOTAL	\$22,055,486.08	100.00%	\$22,364,801.54	100.00%	\$27,332,630.58	100.00%	\$39,493,483.82	100.00%	\$27,398,312.99	100.00%	\$138,644,715.01	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Table 4-11 shows the separate results on the utilization of prime consultants, subconsultants, and subrecipients on FHWA-funded professional services projects by region. Statewide, M/W/DBE firms received 15.38 percent of the FHWA-funded professional services award dollars. The utilization of Alaska Native Corporations (6.48%) was higher than any M/W/DBE group. In terms of percentage of FHWA-funded professional services award dollars and region, the utilization of M/W/DBE firms was higher in the Central Region (19.34%). DBE certified firms were utilized the highest in the Central Region (9.09%). The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded professional services projects are presented separately in Appendix A, Table A-7, and Table A-8.

TABLE 4-11. UTILIZATION ANALYSIS OF PROFESSIONAL SERVICES PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY REGION BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOST REGION		STATEWIDE, TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms								
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$3,837,386.33	8.30%	\$1,057,639.68	2.89%	\$1,493,975.00	9.53%	\$6,389,001.01	6.48%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$3,149,152.95	6.81%	\$1,510,176.51	4.12%	\$544,443.00	3.47%	\$5,203,772.46	5.28%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%	\$14,775.00	0.04%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$1,954,453.48	4.23%	\$1,413,107.42	3.86%	\$174,611.50	1.11%	\$3,542,172.40	3.60%
Total M/W/DBE Firms	\$8,940,992.76	19.34%	\$3,995,698.61	10.91%	\$2,213,029.50	14.12%	\$15,149,720.87	15.38%
Non-M/W/DBE Firms	\$37,291,990.97	80.66%	\$32,625,092.80	89.09%	\$13,463,275.56	85.88%	\$83,380,359.33	84.62%
TOTAL	\$46,232,983.73	100.00%	\$36,620,791.41	100.00%	\$15,676,305.06	100.00%	\$98,530,080.20	100.00%
DBE Certified Firms								
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$82,299.00	0.18%	\$0.00	0.00%	\$3,400.00	0.02%	\$85,699.00	0.09%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$2,976,203.95	6.44%	\$1,426,350.00	3.89%	\$509,675.00	3.25%	\$4,912,228.95	4.99%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%	\$14,775.00	0.04%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$1,145,988.35	2.48%	\$347,787.18	0.95%	\$94,779.00	0.60%	\$1,588,554.53	1.61%
Total DBE Certified Firms	\$4,204,491.30	9.09%	\$1,788,912.18	4.88%	\$607,854.00	3.88%	\$6,601,257.48	6.70%
Non-DBE Certified Firms	\$42,028,492.43	90.91%	\$34,831,879.23	95.12%	\$15,068,451.06	96.12%	\$91,928,822.72	93.30%
TOTAL	\$46,232,983.73	100.00%	\$36,620,791.41	100.00%	\$15,676,305.06	100.00%	\$98,530,080.20	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded professional services projects are presented separately in Appendix A, Table A-7 and Table A-8.

Table 4-12 shows the utilization of prime consultants, subconsultants, and subrecipients on FHWA-funded professional services projects for each year of the study period. M/W/DBE utilization was higher in FFY2015 (24.54%) than any other year of the study period followed by FFY2016 (21.60%). The corresponding results for the utilization analyses of firms by federal fiscal year on FAA- and FTA-funded professional services projects are presented separately in Appendix A, Table A-9 and Table A-10.

TABLE 4-12. UTILIZATION ANALYSIS OF PROFESSIONAL SERVICES PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY FEDERAL FISCAL YEAR BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2015		2016		2017		2018		2019		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms												
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$1,913,428.33	10.85%	\$1,927,348.68	10.74%	\$1,481,482.00	8.22%	\$398,626.00	1.56%	\$668,116.00	3.46%	\$6,389,001.01	6.48%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$1,706,663.95	9.68%	\$1,420,795.91	7.91%	\$679,686.00	3.77%	\$542,454.60	2.12%	\$854,172.00	4.42%	\$5,203,772.46	5.28%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$14,775.00	0.08%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$693,148.60	3.93%	\$528,817.82	2.95%	\$641,057.13	3.56%	\$1,228,848.85	4.80%	\$450,300.00	2.33%	\$3,542,172.40	3.60%
Total M/W/DBE Firms	\$4,328,015.88	24.54%	\$3,876,962.41	21.60%	\$2,802,225.13	15.55%	\$2,169,929.45	8.48%	\$1,972,588.00	10.20%	\$15,149,720.87	15.38%
Non-M/W/DBE Firms	\$13,307,293.22	75.46%	\$14,075,429.13	78.40%	\$15,219,125.50	84.45%	\$23,420,350.17	91.52%	\$17,358,161.31	89.80%	\$83,380,359.33	84.62%
TOTAL	\$17,635,309.10	100.00%	\$17,952,391.54	100.00%	\$18,021,350.63	100.00%	\$25,590,279.62	100.00%	\$19,330,749.31	100.00%	\$98,530,080.20	100.00%
DBE Certified Firms												
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Native Corporation	\$0.00	0.00%	\$3,400.00	0.02%	\$0.00	0.00%	\$4,000.00	0.02%	\$78,299.00	0.41%	\$85,699.00	0.09%
Alaska Tribal Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$1,560,214.95	8.85%	\$1,366,220.00	7.61%	\$667,418.00	3.70%	\$481,304.00	1.88%	\$837,072.00	4.33%	\$4,912,228.95	4.99%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$14,775.00	0.08%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$14,775.00	0.01%
Nonminority Women	\$245,559.10	1.39%	\$206,041.68	1.15%	\$156,590.00	0.87%	\$562,853.75	2.20%	\$417,510.00	2.16%	\$1,588,554.53	1.61%
Total DBE Certified Firms	\$1,820,549.05	10.32%	\$1,575,661.68	8.78%	\$824,008.00	4.57%	\$1,048,157.75	4.10%	\$1,332,881.00	6.90%	\$6,601,257.48	6.70%
Non-DBE Certified Firms	\$15,814,760.05	89.68%	\$16,376,729.86	91.22%	\$17,197,342.63	95.43%	\$24,542,121.87	95.90%	\$17,997,868.31	93.10%	\$91,928,822.72	93.30%
TOTAL	\$17,635,309.10	100.00%	\$17,952,391.54	100.00%	\$18,021,350.63	100.00%	\$25,590,279.62	100.00%	\$19,330,749.31	100.00%	\$98,530,080.20	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by DOT&PF between October 1, 2014 to September 30, 2019.

Note: The corresponding results for the utilization analyses of firms by federal fiscal year on FAA- and FTA-funded professional services projects are presented separately in Appendix A, Table A-9 and Table A-10.

4.5 CONCLUSION

This chapter presented the results of MGT's analyses of the market area and utilization of firms on DOT&PF prime contracts, subcontracts, and subrecipients for construction and professional services projects awarded between FFY2015 and FFY2019. Based on the results of the market area analyses, the state of Alaska was identified as the relevant market area.

As far as utilization, M/W/DBE firms on construction projects (all three funding modals combined) received 17.68 percent of the total award dollars. DBE certified firms received 6.91 percent of the total award dollars for construction projects. Among M/W/DBE firms and based on all three funding modals combined, all groups were utilized on construction projects, except for Alaska Tribal Corporations.

All M/W/DBE categories were utilized on professional services projects, except for African American-owned firms, Asian Indian/Pacific Islander-owned firms, and Alaska Tribal Corporations. M/W/DBE firms received 17.38 percent of the total award dollars for professional services projects. DBE certified firms received 9.13 percent of the total award dollars for professional services projects.

CHAPTER 5. AVAILABILITY AND
DISPARITY ANALYSES

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



Chapter 5 presents the results of MGT’s analyses of availability and disparity for DOT&PF construction and professional service projects awarded during the study period. To understand the analyses presented in this chapter, it is important to provide definitions of key terms discussed in this chapter. The following section presents these definitions.

CHAPTER SECTIONS



- 5.1 Chapter Definitions
- 5.2 Availability Analysis
- 5.3 Disparity Analysis
- 5.4 Conclusion

5.1 CHAPTER DEFINITIONS

Availability Analysis Methodology. There is no single approach to estimating the availability of firms that has been adopted by the post-*Croson* case law. Overall, the case law has emphasized firms being qualified, ready, willing, and able to pursue work with an agency. Therefore, MGT staff analyzed the availability of firms using the following data sources: custom census and DOT&PF vendor data sets. The following explains how each data source was used to create a Master Vendor Availability database, which is the basis for the availability numbers:

- ◆ **DOT&PF Vendor Data Sets.** MGT used DOT&PF’s BizTrak vendor list, DBE list, Bidders list, Firm list, and Utilized vendors as the basis for availability database. There is case law where studies estimating availability based on vendor data have been upheld in federal court.¹⁷⁰ Vendor data was extracted from the DOT&PF’s vendor data sets.
- ◆ **Custom Census.** It has been noted that many vendor lists are deficient on non-M/WBE participation. To remedy this, MGT supplemented the vendor lists collected using a custom census to ascertain additional vendors that are available to do work for the DOT&PF. Availability estimates were based on firms represented in the study’s custom census. It should be noted that there are deficiencies to Dun & Bradstreet, which include:
 - No racial, ethnic, and gender information.
 - No indication of whether a firm has a professional license in the state of Alaska.

MGT staff addressed these deficiencies by first pulling the entire universe of firms within the DOT&PF market areas from Dun & Bradstreet. The sample was limited to firms located in the state of Alaska and identified as providing construction or professional services. Once the sample was pulled, MGT staff cross referenced these firms with a combined directory of firms compiled from the following sources: DOT&PF UCP list, DOT&PF Bidders list, DOT&PF AASHTOWare/BizTrak vendor list, DOT&PF firm data, Small Business Administration 8(a) list of firms, Afognak Native Corporation, Ahtna, Inc., Arctic Slope Regional Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chenega Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon Limited, Huna Totem Corporation, Kake Tribal Corporation, Koniag, Inc., Northwest Alaska Native Association, Olgoonik Corporation, Sealaska

¹⁷⁰ *H.B. Rowe v. North Carolina DOT*, 589 FSupp.2d 587 (ED NC 2008).

Corporation, The Aleut Corporation. Once this process was completed, the remaining deficiencies were addressed by conducting a short survey.

Firms were asked:

- Ethnicity, race, and gender information.
- Verify the NAICS code assigned in the Dun & Bradstreet data.

The survey questionnaire used in this process is presented in **Appendix B**.

After compiling these sources into the Master Vendor Availability Database, MGT verified the business licenses of those firms surveyed by cross referencing them to the Alaska Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing database. Those that did not have licenses were deemed not available.

Additionally, vendors that have done work in multiple regions of Alaska and those vendors that have indicated a desire to work in multiple regions are deemed available in those regions. As such a straight aggregation of the raw vendor numbers shown throughout the chapter is not possible as there are overlaps of vendors who are available in multiple regions. The statewide count is a unique or unduplicated count of firms

Finally, MGT only utilized those vendors that were part of the NAICS procurement codes utilized by the DOT&PF for construction and professional services.

Disparity Analysis Methodology. Disparity, in this context, is the analysis of the differences between the utilization of minority- and women-owned firms (as presented in **Chapter 4**) and the respective availability of those firms (**Section 5.2**). Thus, MGT calculated disparity indices to examine whether minority- and women-owned firms received a proportional share of dollars based on the respective availability of minority- and women-owned firms located in the study's defined relevant market area (as presented in **Chapter 4**).

MGT's disparity index methodology yields a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within minority- and women-owned firms can be assessed with reference to the utilization of nonminority- and male-owned firms.

The **disparity index** is a simple proportional calculation that divides utilization rates (percent of dollars awarded to firms by class) by their associated availability (percent of firms available to work, within that same class) and multiplies

$$\text{Disparity Index} = \frac{\%U_{m,p_i}}{\%A_{m,p_i}} \times 100$$

U_{m,p_i} = utilization of minorities- and women-owned firms_i for procurement_i

A_{m,p_i} = availability of minorities- and women-owned firms_i for procurement_i

this value by 100. Thus, a disparity index value of zero (0.00) indicates absolutely no utilization and, therefore, absolute disparity. A disparity index of 100 indicates that utilization is perfectly proportionate to availability, therefore indicating the absence of disparity (that is, all things being equal). Alternately, firms are considered **underutilized** if the disparity indices are less than 100, and **overutilized** if the indices are above 100.

Since there is no standardized measurement to evaluate the levels of underutilization or overutilization within a procurement context, MGT’s methodology to measure disparity, if disparity is found, is based on the Equal Employment Opportunity Commission’s (EEOC) “80 percent rule.”¹⁷¹ In the employment discrimination framework, an employment disparity index below 80 indicates a “substantial disparity.” The Supreme Court has accepted the use of the “80 percent rule” in *Connecticut v. Teal (Teal)*, 457 U.S. 440 (1982).¹⁷² Therefore, following a similar pattern, firms are considered substantially underutilized (substantial disparity) if the disparity indices are 80 or less.

Standard deviation tests or testing for **statistical significance**, in this context, is the analysis to determine the significance of the difference between the utilization of minority- and women-owned firms and the availability of those firms. This analysis can determine whether the disparities are substantial or statistically significant, which lends further statistical support to a finding of discrimination. The following explains MGT’s methodology.

Standard deviation measures the probability that a result is a random deviation from a predicted result, where the greater the number of standard deviations, the lower the probability the result is a random one. The accepted standard used by Courts in disparity testing has been two standard deviations. That is, if there is a result that falls within two standard deviations, then one can assume that the results are nonsignificant, or that no disparity has been confidently established.

Regarding the use of statistical significance in the disparity study context the National Cooperative Highway Research Program Report 644¹⁷³ notes that:

- ♦ “. . . for statistical disparities to be taken as legally dispositive in the discrimination context, they should be (a) statistically significant and (b) “substantively” significant. Substantive significance is taken to mean, for example, a DBE utilization measure that is less than or equal to 80% of the corresponding DBE availability measure.”
- ♦ “In discrimination cases, the courts have usually required p-values of 5% or less to establish statistical significance in a two-sided case.”

Statistical Significance Testing

$$t = \frac{u - a}{\sqrt{\frac{a * (1 - a) * \sum c_i^2}{(\sum c_i)^2}}}$$

t = the t-statistic

u = the ratio of minorities- and women-owned firms’ dollars compared to total dollars

a = the ratio of M/W/DBE firms to all firms

c_i = the dollar amount.

Note that p-values are used to determine whether the differences between two populations feature legitimate differences (that would be sustained if we continued to collect more observations), or if the variation between them is simply a product of normal random variation between observations that would

¹⁷¹ Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*, Section 4, Part D, “Adverse impact and the ‘four-fifths rule.’”

¹⁷² In *Teal* and other affirmative action cases, the terms “adverse impact,” “disparate impact,” and “discriminatory impact” are used interchangeably to characterize values of 80 and below.

¹⁷³ Transportation Research Board of the National Academies, *National Cooperative Highway Research Program Report 644, Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* (2010), pages 49-50.

be washed out if we collected more data. A p-value of less than 0.05 suggests it is highly unlikely that the differences between two groups are just driven by chance. The use of the t-test to calculate p-values for disparity indices was approved by the Fourth Circuit in *H.B. Rowe v. Tippett*, 615 F.3d 233, 244-45 (4th Cir 2010).

Thus, MGT applies two major tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective M/WBE availability, which is labeled “substantial disparity” and (2) whether the disparity index passes the t-test determination of statistical significance. In cases where one, or especially both, measures hold true, a remedy is typically deemed to be justifiable by courts, making these results critical outcomes of the subsequent analyses.

5.2 AVAILABILITY ANALYSIS

Following the methodology prescribed in the previous section, MGT derived estimates for proportions of available firms for the racial, ethnic, and gender ownership classes and five defined procurement categories. In addition, as mentioned in **Chapter 4**, courts have accepted disparity studies based on race, ethnicity, and gender (M/W/DBE group) as opposed to DBE certification status. Therefore, MGT did not separately calculate availability for DBE certified firms.¹⁷⁴ Refer to **Appendix J** for overall methodology for the overall annual DBE goals.

MGT used the Master Availability Vendor Database to estimate the availability of contractors and vendors in DOT&PF’s market area. **Table 5-1** presents the results by the three DOT&PF regions for each M/W/DBE group. Statewide M/W/DBE availability for all vendors was almost 22 percent. In terms of regions, M/W/DBE availability was higher in the Southcoast Region (40.22%) than any other region. M/W/DBE availability was lowest in the Central Region (23.82%).

¹⁷⁴ Results on the utilization of DBE certified firms are presented in Chapter 4 and Appendix A.

TABLE 5-1. ESTIMATION OF AVAILABLE FIRMS,
ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE, TOTAL	
	#	%	#	%	#	%	#	%
African Americans	8	1.05%	4	0.94%	3	1.11%	8	0.79%
Alaska Native Corporation	38	4.97%	30	7.08%	23	8.49%	41	4.06%
Alaska Tribal Corporation	0	0.00%	0	0.00%	0	0.00%	0	0.00%
American Indians/Alaska Natives	56	7.33%	35	8.25%	27	9.96%	69	6.83%
Asian Indian/Pacific Islanders	6	0.79%	2	0.47%	5	1.85%	9	0.89%
Hispanic Americans	20	2.62%	16	3.77%	11	4.06%	22	2.18%
Nonminority Women	54	7.07%	43	10.14%	40	14.76%	71	7.03%
Total M/W/DBE Firms	182	23.82%	130	30.66%	109	40.22%	220	21.78%
Non-M/W/DBE Firms	582	76.18%	294	69.34%	162	59.78%	790	78.22%
TOTAL	764	100.00%	424	100.00%	271	100.00%	1010	100.00%

Source: MGT developed a Master Availability Database based on custom census, and the DOT&PF vendor lists.

Note: Region individual numbers do not aggregate up to Statewide totals because there are firms that can do work for DOT&PF within multiple regions.

Table 5-2 presents the results by the three DOT&PF regions and each M/W/DBE group for the construction business category. Overall, M/W/DBE availability for construction firms was close to 21 percent. In terms of regions, M/W/DBE availability was higher in the Southcoast Region (33.33%) than any other region. M/W/DBE availability was lowest in the Central Region (22.80%).

TABLE 5-2. ESTIMATION OF AVAILABLE FIRMS,
CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE, TOTAL	
	#	%	#	%	#	%	#	%
African Americans	7	1.40%	3	1.09%	2	1.23%	7	1.04%
Alaska Native Corporation	23	4.60%	17	6.20%	12	7.41%	26	3.86%
Alaska Tribal Corporation	0	0.00%	0	0.00%	0	0.00%	0	0.00%
American Indians/Alaska Natives	37	7.40%	20	7.30%	15	9.26%	49	7.28%
Asian Indian/Pacific Islanders	4	0.80%	1	0.36%	3	1.85%	6	0.89%
Hispanic Americans	15	3.00%	11	4.01%	7	4.32%	16	2.38%
Nonminority Women	28	5.60%	18	6.57%	15	9.26%	37	5.50%
Total M/W/DBE Firms	114	22.80%	70	25.55%	54	33.33%	141	20.95%
Non-M/W/DBE Firms	386	77.20%	204	74.45%	108	66.67%	532	79.05%
TOTAL	500	100.00%	274	100.00%	162	100.00%	673	100.00%

Source: MGT developed a Master Availability Database based on custom census, and the DOT&PF vendor lists.

Note: Region individual numbers do not aggregate up to Statewide totals because there are firms that can do work for the DOT&PF within multiple regions.

Table 5-3 presents the results by the three DOT&PF regions and each M/W/DBE group for the professional services business category. Overall, M/W/DBE availability for professional services firms was 23.44 percent. In terms of regions, M/W/DBE availability was higher in the Southcoast Region (50.46%) than any other region. M/W/DBE availability was lowest in the Central Region (25.76%).

**TABLE 5-3. ESTIMATION OF AVAILABLE FIRMS,
PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHCOAST REGION		STATEWIDE, TOTAL	
	#	%	#	%	#	%	#	%
African Americans	1	0.38%	1	0.67%	1	0.92%	1	0.30%
Alaska Native Corporation	15	5.68%	13	8.67%	11	10.09%	15	4.45%
Alaska Tribal Corporation	0	0.00%	0	0.00%	0	0.00%	0	0.00%
American Indians/Alaska Natives	19	7.20%	15	10.00%	12	11.01%	20	5.93%
Asian Indian/Pacific Islanders	2	0.76%	1	0.67%	2	1.83%	3	0.89%
Hispanic Americans	5	1.89%	5	3.33%	4	3.67%	6	1.78%
Nonminority Women	26	9.85%	25	16.67%	25	22.94%	34	10.09%
Total M/W/DBE Firms	68	25.76%	60	40.00%	55	50.46%	79	23.44%
Non-M/W/DBE Firms	196	74.24%	90	60.00%	54	49.54%	258	76.56%
TOTAL	264	100.00%	150	100.00%	109	100.00%	337	100.00%

Source: MGT developed a Master Availability Database based on custom census, and DOT&PF vendor lists.

Note: Region individual numbers do not aggregate up to Statewide totals because there are firms that can do work for the DOT&PF within multiple regions.

5.3 DISPARITY ANALYSES AND SIGNIFICANCE TESTING

The next series of exhibits present a summary of the disparity results. Similar to MGT's utilization analyses, disparity was examined several ways including statewide, by the DOT&PF three regions, as well as by U.S. DOT funding modals (combined and separately). The detailed disparity analysis results are presented in **Appendix A**. In **Appendix A, Exhibit A-11** through **Exhibit A-13** presents the disparity results for construction contracts for all funding modals combined by region.

Table 5-4 presents the disparity summary results for construction projects (based on all three funding modals). The disparity is based on the racial, ethnic, and gender classification regardless of DBE certification status. Since availability and disparity results were not calculated on DBE certified firms, and since calculating availability and disparity strictly based off DBE certification is not a justification courts have accepted for implementing race-conscious programs, this section of the exhibit is not shown.

Overall, M/W/DBE firms (disparity index 84.40) were underutilized on construction projects (all three funding modals). Among the M/W/DBE groups, all M/W/DBE firms were underutilized, with the exception of Alaska Native Corporation-owned firms and Hispanic American-owned firms.

TABLE 5-4. DISPARITY ANALYSIS, CONSTRUCTION
FUNDING MODALS COMBINED

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.88%	1.04%	84.59	Underutilization		Disparity
Alaska Native Corporation	4.55%	3.86%	117.70	Overutilization	¥¥	No Disparity
Alaska Tribal Corporation	0.00%	0.00%		n/a		n/a
American Indians/Alaska Natives	1.77%	7.28%	24.30	Underutilization	¥¥	Disparity
Asian Indian/Pacific Islanders	0.27%	0.89%	30.34	Underutilization	¥¥	Disparity
Hispanic Americans	5.15%	2.38%	216.58	Overutilization	¥¥	No Disparity
Nonminority Women	5.07%	5.50%	92.15	Underutilization		Disparity
Total M/W/DBE Firms	17.68%	20.95%	84.40	Underutilization	¥¥	Disparity
Non-M/W/DBE Firms	82.32%	79.05%	104.14	Overutilization	¥¥	No Disparity

Source: Disparity Analyses.

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00.

¥¥ denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

n/a: No disparity could be calculated due to no utilization or availability.

Table 5-5 presents the disparity summary results for M/W/DBE firms on FHWA-funded construction projects. Overall, M/W/DBE firms (disparity index of 83.40) were underutilized. African American-owned firms, Hispanic American-owned firms, and nonminority women-owned firms were all overutilized. The corresponding disparity results on FHWA-funded construction contracts by region is presented in **Appendix A, Exhibit A-14** through **Exhibit A-16**. **Exhibit A-17** through **Exhibit A-24** presents the corresponding disparity results on FAA- and FTA- funded construction projects overall and by region.

TABLE 5-5. DISPARITY ANALYSIS, CONSTRUCTION
FUNDING MODAL: FHWA

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	1.10%	1.04%	105.83	Overutilization		No Disparity
Alaska Native Corporation	2.87%	3.86%	74.25	Underutilization	¥¥	Disparity
Alaska Tribal Corporation	0.00%	0.00%		n/a		n/a
American Indians/Alaska Natives	1.43%	7.28%	19.65	Underutilization	¥¥	Disparity
Asian Indian/Pacific Islanders	0.30%	0.89%	33.17	Underutilization	¥¥	Disparity
Hispanic Americans	5.71%	2.38%	240.01	Overutilization	¥¥	No Disparity
Nonminority Women	6.07%	5.50%	110.42	Overutilization		No Disparity
Total M/W/DBE Firms	17.47%	20.95%	83.40	Underutilization	¥¥	Disparity
Non-M/W/DBE Firms	82.53%	79.05%	104.40	Overutilization	¥¥	No Disparity

Source: Disparity Analyses.

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00.

¥¥ denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

n/a: No disparity could be calculated due to no utilization or availability.

Table 5-6 presents the disparity summary results for M/W/DBE firms on professional services projects (based on all three funding modals). Overall, M/W/DBE firms (disparity index of 74.12) were substantially

underutilized (substantial disparity). American Indian/Alaska Native-owned firms, and Alaska Native Corporations were found to not have disparity. In **Appendix A, Exhibit A-25** through **Exhibit A-27** presents the disparity results for professional services contracts for all funding modals combined by region.

TABLE 5-6. DISPARITY ANALYSIS, PROFESSIONAL SERVICES
FUNDING MODALS COMBINED

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	0.30%	0.00	Underutilization	¥¥	Disparity
Alaska Native Corporation	6.68%	4.45%	150.13	Overutilization	¥¥	No Disparity
Alaska Tribal Corporation	0.00%	0.00%		n/a		n/a
American Indians/Alaska Natives	6.49%	5.93%	109.28	Overutilization		No Disparity
Asian Indian/Pacific Islanders	0.00%	0.89%	0.00	Underutilization	¥¥	Disparity
Hispanic Americans	0.53%	1.78%	29.64	Underutilization	¥¥	Disparity
Nonminority Women	3.68%	10.09%	36.49	Underutilization	¥¥	Disparity
Total M/W/DBE Firms	17.38%	23.44%	74.12	Underutilization	¥¥	Disparity
Non-M/W/DBE Firms	82.62%	76.56%	107.92	Overutilization	¥¥	No Disparity

Source: Disparity Analyses.

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00.

¥¥ denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

n/a: No disparity could be calculated due to no utilization or availability.

Table 5-7 presents the disparity summary results for M/W/DBE firms on FHWA-funded professional services projects. Overall, M/W/DBE firms (disparity index of 65.59) were substantially underutilized (substantial disparity). American Indian/Alaska Native-owned firms were underutilized but not substantial (disparity index of 88.99), while Alaska Native Corporations were overutilized (disparity index of 145.68). The corresponding disparity results on FHWA-funded professional services contracts by region is presented in **Appendix A, Exhibit A-28** through **Exhibit A-30**. The corresponding disparity results on FAA- and FTA-funded professional services projects by region are presented in **Appendix A, Exhibit A-31** through **Exhibit A-37**.

TABLE 5-7. DISPARITY ANALYSIS, PROFESSIONAL SERVICES
FUNDING MODAL: FHWA

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	0.30%	0.00	Underutilization	¥¥	Disparity
Alaska Native Corporation	6.48%	4.45%	145.68	Overutilization	¥¥	No Disparity
Alaska Tribal Corporation	0.00%	0.00%		n/a		n/a
American Indians/Alaska Natives	5.28%	5.93%	88.99	Underutilization		Disparity
Asian Indian/Pacific Islanders	0.00%	0.89%	0.00	Underutilization	¥¥	Disparity
Hispanic Americans	0.01%	1.78%	0.84	Underutilization	¥¥	Disparity
Nonminority Women	3.60%	10.09%	35.63	Underutilization	¥¥	Disparity
Total M/W/DBE Firms	15.38%	23.44%	65.59	Underutilization	¥¥	Disparity
Non-M/W/DBE Firms	84.62%	76.56%	110.54	Overutilization	¥¥	No Disparity

Source: Disparity Analyses.

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00.

¥¥ denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

n/a: No disparity could be calculated due to no utilization or availability.

5.4 CONCLUSIONS

The calculations of availability and disparity within this chapter and the preceding analysis of utilization serve as the foundation for the future of the DOT&PF's DBE program. These analyses provide the quantitative legal justification for any current or future remedies to assist DBE enterprises within the market. Although some disparities were observed throughout the business categories and ethnicities, they were not statistically sufficient to warrant changing the current ethnicity/gender natural DBE program to a specific ethnicity/gender program. For example, in construction Alaska Native Corporations, Alaska Tribal Corporations, and Hispanic Americans were either overutilized or not utilized at all, and as such there would be no need to have a specific ethnicity/gender program.

CHAPTER 6. PRIVATE SECTOR AND
NON-GOAL ANALYSES

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



6.1 INTRODUCTION

This chapter presents evidence of disparities in the private sector in Alaska Department of Transportation & Public Facilities (DOT&PF) product and geographic marketplace and seeks to answer the following question:

- ◆ ***Do contracting disparities exist in the private sector, which compel the DOT&PF to continue its M/WBE programs to avoid becoming a passive participant in discrimination?***

As explained in **Chapter 2**, courts have held that a government entity may have a race-conscious procurement program only if it has a compelling interest based on a record of active or passive discrimination. Passive discrimination occurs when a public entity operates in a market where discrimination occurs in the private sector and the public entity fails to take proactive actions to implement remedies within the domain of its control. The following is a brief summary of court opinions highlighting the importance of private sector analyses in providing constitutional justification for a race-conscious procurement program:

- ◆ The Supreme Court in *Croson* stated, “if the city could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.”¹⁷⁵ This does not mean that the public entity is continuously turning a blind eye to discrimination, but rather that the public entity has a compelling interest to mitigate private sector discrimination or risk becoming a passive participant to discrimination.
- ◆ The Supreme Court also stated, “[i]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”¹⁷⁶
- ◆ *Croson* further provides that the governmental entity “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”¹⁷⁷
- ◆ In *Concrete Works IV*, the court held that Denver satisfied its burden of showing it was an “indirect participant in industry discrimination” when it presented non-goals data (*i.e.*, utilization of M/WBEs when the projects do not contain goals) as evidence.¹⁷⁸ The court further found that barriers to business formation were relevant insofar as this evidence demonstrated that M/WBEs were “precluded at *the outset* from competing for public construction contracts.”¹⁷⁹

¹⁷⁵ *Croson*, 488 U.S. at 492.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*; see generally, I. Ayres and F. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” 98 *Columbia Law Review* 1577 (1998).

¹⁷⁸ *Concrete Works of Colo., Inc. v. City and County of Denver*, 321 F.3d 950, 984–85 (10th Cir. 2003).

¹⁷⁹ *Id.* at 977.

CHAPTER SECTIONS



- 6.1 Introduction
- 6.2 Private Sector Disparities
- 6.3 Analysis of Race, Ethnicity, and Gender Effects on Self-Employment Rates
- 6.4 Non-Goal Analysis
- 6.5 Access to Credit
- 6.6 Conclusion

- ◆ Similarly, in *Adarand VII*, the Tenth Circuit concluded there was a compelling interest for a government Disadvantaged Business Enterprise (DBE) program, based primarily on evidence of private sector discrimination.¹⁸⁰ The court found that evidence of capital market discrimination was relevant in establishing the factual predicate for the DBE program.¹⁸¹ The court also found a regression analysis of census data to be relevant evidence showing barriers to M/WBE formation.¹⁸²

Thus, a showing of discriminatory practices in the private marketplace may provide the required *compelling interest* to support an agency's program in order to prevent the agency from becoming a *passive participant* to discrimination.

With these precedents in mind, this chapter provides evidence and support for the DOT&PF's continued compelling interest in maintaining its DBE program based on MGT's private sector analysis. MGT's analysis addressed the following:

- ◆ **2012 Census Survey of Business Owners (SBO) data**, which is used to determine:
 1. *Do disparities exist in the private sector in the DOT&PF's marketplace within the two procurement categories?*
- ◆ **2015-2019 Census American Community Survey (ACS) Public Used Microdata Sample (PUMS) data**, which is used to determine:
 1. *Are members of racial, ethnic, and gender minority groups less likely than nonminority males to be self-employed?*
 2. *Does racial, ethnic, and gender status impact self-employed individuals' earnings?*
- ◆ **DOT&PF Utilization-Projects with Goals vs. Projects without Goals**, which is used to determine:
 1. *Are DBE vendors utilized at the same rates when there are goals associated with construction projects vs. construction projects without goals?*
- ◆ **Credit Market Experiences of SBA Vendors**

6.2 PRIVATE SECTOR DISPARITY ANALYSIS BASED ON SURVEY OF BUSINESS OWNER (SBO) DATA

The first question to be addressed by this chapter is:

1. *Do disparities exist in the private sector in the DOT&PF's marketplace within the two procurement categories?*

¹⁸⁰ *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1170–73 (10th Cir. 2000).

¹⁸¹ *Id.* at 1169–70.

¹⁸² *Id.* at 968, 977.

To address this question, MGT obtained and analyzed the U.S. Census Bureau’s 2012 Survey of Business Owners (SBO) data to measure private sector disparities.¹⁸³ SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as states and metropolitan areas), categorized by industries defined by North American Industry Classification System (NAICS) codes, and supporting information including firm receipts (sales),¹⁸⁴ firm employment size, and business ownership classification. The survey has been administered every five years since 1972 as part of the economic census.

The SBO gathers and reports data on (1) firms with paid employees, including workers on the payroll (employer firms), and (2) firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (non-employer firms), as well as (3) in aggregate across all firms. MGT calculated private sector disparity indices to examine whether minority and women owned firms in these categories received a proportionate share of dollars collected based on the availability of minority and women owned firms in the state of Alaska. Disparity indices were examined for all firms and employer firms.

PRODUCT AND GEOGRAPHIC MARKETPLACES

MGT analyzed the following NAICS codes within the SBO data because they align most closely with the DOT&PF’s product market:

- ◆ NAICS Code 23, Construction
- ◆ NAICS Code 54, Professional, Scientific, and Technical Services

This private sector analysis presents disparity results based on the state of Alaska geographic market area.

Table 6-1 and **Table 6-2** show the measures of private sector disparities based on U.S. Census Bureau’s 2012 SBO data for the population of available firms in the state of Alaska by race, ethnicity, and gender for construction and professional, scientific, and technical services.

Based on the analysis of this data, MGT determined that a significant gap exists between the market share of firms owned by minorities and women firms and their share of the state of Alaska business population.

NAICS CODE 23: CONSTRUCTION, STATE MARKETPLACE

Table 6-1 shows the availability, sales, and disparity results for construction. The results were derived from those firms that provide construction or construction-related services under NAICS Code 23.

¹⁸³ This represents the most recent available data provided through the SBO program.

¹⁸⁴ ‘Sales’ includes total shipments, receipts, revenue, or business done by the firm.

TABLE 6-1. PRIVATE SECTOR CENSUS DISPARITIES
 NAICS CODE 23, CONSTRUCTION
 U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS, STATE OF ALASKA MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	6,906	\$6,565,102	2,390	\$6,280,194
Nonminority Male	5,773	\$5,876,902	1,993	\$5,625,458
Minority	908	\$492,662	230	\$449,149
African American	72	\$10,596	9	\$8,695
American Indian and Alaska Native	481	\$286,674	127	\$269,545
Asian	99	\$32,685	14	\$28,156
Hispanic ⁴	240	\$149,270	71	\$142,753
Native Hawaiian and Other Pacific Islander	16	\$14,437	9	S
Nonminority Female	524	\$362,024	248	\$348,328
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	83.59%	89.52%	83.39%	89.57%
Minority	13.15%	7.52%	9.62%	7.15%
African American	1.04%	0.16%	0.38%	0.14%
American Indian and Alaska Native	6.96%	4.37%	5.31%	4.29%
Asian	1.43%	0.50%	0.59%	0.45%
Hispanic ⁴	3.48%	2.27%	2.97%	2.27%
Native Hawaiian and Other Pacific Islander	0.23%	0.22%	0.38%	S
Nonminority Female	7.59%	5.51%	10.38%	5.55%
DISPARITY RATIOS³				
All Firms		100.00		100.00
Nonminority Male		107.09		107.42
Minority		57.19		74.32
African American		15.48		36.77
American Indian and Alaska Native		62.69		80.77
Asian		34.73		76.54
Hispanic ⁴		65.43		76.52
Native Hawaiian and Other Pacific Islander		94.92		S
Nonminority Female		72.68		53.45

Source: MGT of America, Inc. conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms includes both employer firms and nonemployer firms, since nonemployer firms can provide services at the subcontractor/subconsultant level, as well hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales includes total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

There was a total of 6,906 construction firms in the state of Alaska in 2012, of which 13.15 percent were owned by minorities and 7.59 percent by nonminority female firms. A comparison of these M/WBE firm availability numbers with the sales dollars received by those M/WBE firms shows the following disparities:

- ◆ African American firms (disparity index of 15.48) were substantially underutilized, accounting for 1.04 percent of all firms and 0.16 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 62.69) were substantially underutilized, accounting for 6.96 percent of all firms and 4.37 percent of sales.
- ◆ Asian firms (disparity index of 34.73) were substantially underutilized, accounting for 1.43 percent of all firms and 0.50 percent of sales.
- ◆ Hispanic firms (disparity index of 65.43) were substantially underutilized, accounting for 3.48 percent of all firms and 2.27 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firms (disparity index of 94.92) were underutilized, accounting for 0.23 percent of all firms and 0.22 percent of sales.
- ◆ Nonminority female firms (disparity index of 72.68) were substantially underutilized, accounting for 7.59 percent of all firms and 5.51 percent of sales.

There was a total of 2,390 construction employer firms¹⁸⁵ in the State of Alaska in 2012, of which 9.62 percent were owned by minorities and 10.38 percent by nonminority women firms.

- ◆ African American firms (disparity index of 36.77) were substantially underutilized, accounting for 0.38 percent of all firms and 0.14 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 80.77) were underutilized, accounting for 5.31 percent of all firms and 4.29 percent of sales.
- ◆ Asian firms (disparity index of 76.54) were substantially underutilized, accounting for 0.59 percent of all firms and 0.45 percent of sales.
- ◆ Hispanic firms (disparity index of 76.52) were substantially underutilized, accounting for 2.97 percent of all firms and 2.27 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firms findings were withheld as the estimates did not meet U.S. Census publication standards.
- ◆ Nonminority female firms (disparity index of 53.45) were substantially underutilized, accounting for 10.38 percent of all firms and 5.55 percent of sales.

NAICS CODE 54: PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES, STATE MARKETPLACE

Table 6-2 shows the availability, sales, and disparity results for professional, scientific, and technical services. These types of services, which require a high degree of expertise and training, include, but are not limited to, firms that provide legal advice, accounting, architecture, engineering, computer services, consulting services, and advertising services in NAICS Code 54.

¹⁸⁵ Employer firms include firms with payroll at any time during 2012.

TABLE 6-2. PRIVATE SECTOR CENSUS DISPARITIES
 NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES
 U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS, STATE OF ALASKA MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	8,043	\$2,157,780	1,520	\$1,886,851
Nonminority Male	3,831	\$1,659,839	968	\$1,503,924
Minority	1,213	94,748	81	57,799
African American	129	\$6,317	20	\$4,621
American Indian and Alaska Native	666	\$59,927	32	\$44,402
Asian	231	\$14,192	20	S
Hispanic ⁴	174	\$13,537	8	\$8,776
Native Hawaiian and Other Pacific Islander	13	\$775	1	S
Nonminority Female	2,777	\$299,461	377	\$222,282
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	47.63%	76.92%	63.68%	79.71%
Minority	15.08%	4.39%	5.33%	3.06%
African American	1.60%	0.29%	1.32%	0.24%
American Indian and Alaska Native	8.28%	2.78%	2.11%	2.35%
Asian	2.87%	0.66%	1.32%	N/A
Hispanic ⁴	2.16%	0.63%	0.53%	0.47%
Native Hawaiian and Other Pacific Islander	0.16%	0.04%	0.07%	N/A
Nonminority Female	34.53%	13.88%	24.80%	11.78%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		161.50		125.16
Minority		29.12		57.48
African American		18.25		18.61
American Indian and Alaska Native		33.54		111.78
Asian		22.90		-
Hispanic ⁴		29.00		88.37
Native Hawaiian and Other Pacific Islander		22.22		-
Nonminority Female		40.20		47.50

Source: MGT of America, Inc. conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹ Firms includes both employer firms and nonemployer firms, since nonemployer firms can provide services at the subcontractor/subconsultant level, as well hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

² Sales includes total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

There was a total of 8,043 professional, scientific, and technical services firms in the state of Alaska in 2012, of which 15.08 percent were owned by minorities and 34.53 percent by nonminority female firms. A comparison of these M/WBE firm availability numbers with the sales dollars received by those M/WBE firms shows the following disparities:

- ◆ African American firms (disparity index of 18.25) were substantially underutilized, accounting for 1.60 percent of all firms and 0.29 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 33.54) were substantially underutilized, accounting for 8.28 percent of all firms and 2.78 percent of sales.
- ◆ Asian firms (disparity index of 22.90) were substantially underutilized, accounting for 2.87 percent of all firms and 0.66 percent of sales.
- ◆ Hispanic firms (disparity index of 29.00) were substantially underutilized, accounting for 2.16 percent of all firms and 0.63 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firms (disparity index of 22.22) were substantially underutilized, accounting for 0.16 percent of all firms and 0.04 percent of sales.
- ◆ Nonminority female firms (disparity index of 40.20) were substantially underutilized, accounting for 34.53 percent of all firms and 13.88 percent of sales.

There was a total of 1,520 professional, scientific, and technical services employer firms¹⁸⁶ in the State of Alaska in 2012, of which 5.33 percent were owned by minorities and 24.80 percent by nonminority women firms.

- ◆ African American firms (disparity index of 18.61) were substantially underutilized, accounting for 1.32 percent of all firms and 0.24 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 111.78) were overutilized, accounting for 2.11 percent of all firms and 2.35 percent of sales.
- ◆ Asian firms findings were withheld as the estimates did not meet U.S. Census publication standards.
- ◆ Hispanic firms (disparity index of 88.37) were underutilized, accounting for 0.53 percent of all firms and 0.47 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firms findings were withheld as the estimates did not meet U.S. Census publication standards.
- ◆ Nonminority female firms (disparity index of 47.50) were substantially underutilized, accounting for 24.80 percent of all firms and 11.78 percent of sales.

SBO CONCLUSION

The SBO analysis shows consistent underutilization of M/WBE firms relative to their availability in the DOT&PF's geographic and product markets. There were substantial disparities in each procurement categories for all M/WBE subgroups where sufficient data was available, except for American Indian and

¹⁸⁶ Employer firms include firms with payroll at any time during 2012.

Alaska Native professional, scientific, and technical services employer firms. Thus, this analysis supports the DOT&PF's continued program to ensure that it does not become a passive participant in discrimination, irrespective of circumstances in the public sector.

6.3 ANALYSIS OF RACE, ETHNICITY, AND GENDER EFFECTS ON SELF-EMPLOYMENT RATES

This section addresses the following two questions:

1. *Are members of racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed?*
2. *Does racial, ethnic, and gender status impact self-employed individuals' earnings?*

In order to answer these questions, we employed controls for individual economic and demographic characteristics to examine the effects of race, ethnicity, and gender on self-employment rates and earnings. The analysis targeted two categories of private sector business activity (Construction and Professional Services) that generally align with the DOT&PF's procurement categories. Professional Services also includes Architecture and Engineering, due to data limitations that do not permit separate analysis.

Adopting the methodology and variables employed by the city of Denver disparity study (see *Concrete Works IV, supra*), we used Public Use Microdata Samples (PUMS) data derived from the 2015-2019 American Community Survey (ACS), to which we applied appropriate regression statistics to draw conclusions.

LINKS TO BUSINESS FORMATION AND MAINTENANCE

Research in economics consistently finds group differences by race, ethnicity, and gender in rates of business formation.¹⁸⁷ We know, for instance, that minority groups¹⁸⁸ and nonminority females tend to have lower availability of capital than do nonminority males (ACS PUMS, 2015-2019) and that, in general, the likelihood of being self-employed increases with availability of capital (ACS PUMS, 2015-2019). Our analysis, therefore, controls for these other important demographic and economic variables to determine if we can show that business formation rates are lower for minorities and women specifically because of discrimination. A finding that discrimination, rather than some other factor or factors, has negatively affected self-employment rates and earnings for minority groups and women would support the use of public sector remedies to ensure that the DOT&PF does not become a passive participant in that discrimination.

¹⁸⁷ See *Journal of Econometrics*, Vol. 61, Issue 1, devoted entirely to the econometrics of labor market discrimination and segregation.

¹⁸⁸ Minority groups here refer to African American, Asian Americans, Hispanic Americans, and Native Americans.

STATISTICAL MODELS AND METHODS

To answer the research questions identified for this section, we employed two multivariate regression techniques, respectively: (1) logistic regression and (2) linear regression. Logistic regression is an econometric method that allows for analyzing dichotomous dependent variables. The logistics regression is used to answer the first question “are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed?” The results can then be translated into log likelihoods that allow for an examination of how likely one variable is to be true when compared to another variable. Linear regression is an econometric method that helps explain the linear relationship between the dependent variable and the independent variables – how substantially and in what direction each of the independent variables influence the dependent variable. This will help analyze the direct impact that being part of a specific minority or gender group has on earnings, answering the second question.

To understand the appropriate application of these regression techniques, it is helpful to explore in greater detail the variables inherent in these questions. There are two general categories of variables employed in the regression techniques: (1) dependent variables and (2) independent variables.

- ◆ MGT analyzed the following independent variables: age, race, gender, and disability status.
- ◆ Dependent variables are those explained by the independent variables. Here, we examined self-employment status and earnings.
- ◆ The first dependent variable is the probability of self-employment status, which is a binary, categorical variable based on two possible values: 0 (not self-employed) versus 1 (self-employed).
 - Logistic regression is used to perform an analysis in which the dependent variable is binary and categorical, and therefore was employed for the analysis of self-employment.¹⁸⁹
- ◆ The second dependent variable is earnings from self-employment, which is a continuous variable with many possible values.
 - Continuous variables are best explained using simple linear regression.

THE INFLUENCE OF RACE, ETHNICITY, AND GENDER ON SELF EMPLOYMENT

The 2015-2019 U.S. Census ACS 5 percent PUMS data was used to identify a set of variables known to predict employment status (self-employed/not self-employed). MGT used logistic regression to calculate the probability of being self-employed (the dependent variable), based on socioeconomic and demographic characteristics known to influence the likelihood self-employment. For purposes of this analysis, the sample was limited to labor force participants who met the following criteria:

- ◆ Resident of Alaska.

¹⁸⁹ Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, used in *Concrete Works IV*. Logit, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For a complete explanation, see *Interpreting Probability Models* (T.F. Liao, Text 101 in the Sage University series).

- ♦ Self-employed in construction, professional services, other services, architecture and engineering¹⁹⁰.
- ♦ Employed full-time (more than 35 hours a week).
- ♦ 18 years of age or older.

Next, we identified the following variables as predictors of employment status, based on the variables incorporated in the same analysis in *Concrete Works IV*¹⁹¹

- ♦ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority male.
- ♦ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ♦ **Marital Status.**
- ♦ **Ability to Speak English Well.**
- ♦ **Disability Status:** From individuals' reports of health-related disabilities.
- ♦ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ♦ **Owner's Level of Education.**
- ♦ **Number of Individuals Over the Age of 65 Living in Household.**
- ♦ **Number of Children Under the Age of 18 Living in Household.**

This analysis examined the statistical effects of these variables on the likelihood of being self-employed in Alaska. From the inverse of this value, we can interpret a likelihood value of its effect on self-employment. The results are interpretable based on the inverse of the "odds ratios." For example, the "odds ratio" for an African American is 0.582 as seen in the top portion of **Table 6-3**, while the inverse of this is 1.717, as seen in the lower portion of this table. This inverse value means that a nonminority male is 1.717 times more likely to be self-employed than an African American. Comparisons are made to nonminority males as a control group, where the influence of any of the race, ethnicity, or gender variables is considered absent. In this sense, the circumstance of the nonminority male is considered the baseline for what might be expected for self-employment rates for this market – with race, ethnicity, or gender variables being tested for their positive or negative influence.

¹⁹⁰ Due to inadequate sample size for all races in the architecture and engineering PUMS 2014-2018 data, the architecture and engineering categories were merged with the professional services category.

¹⁹¹ 321 F.3d at 967.

TABLE 6-3. SELF-EMPLOYMENT ODDS RATIOS AND THEIR INVERSES
FOR MINORITY GROUPS RELATIVE TO NONMINORITY MALES
AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS OWNERSHIP CLASSIFICATION	ALL INDUSTRIES	CONSTRUCTION	PROFESSIONAL SERVICES
ODDS-RATIOS			
African American Firms	0.582	N/A	0.395
Hispanic American Firms	0.715	0.875	0.382
Asian American Firms	0.500	0.477	0.272
Native American Firms	0.960	0.461	0.122
Nonminority Female Firms	0.763	0.602	0.495
INVERSE OF ODDS-RATIOS			
African American Firms	1.717	N/A	2.529
Hispanic American Firms	1.399	1.142	2.617
Asian American Firms	1.998	2.094	3.683
Native American Firms	1.042	2.169	8.203
Nonminority Female Firms	1.310	1.661	2.019

Source: PUMS data from 2015-2019 American Community Survey (Alaska) and MGT, calculations using SPSS Statistics software. Note: Shading and **bold** indicates the estimated “odds ratio” for the group was statistically significant at 95% confidence interval.¹⁹²

N/A indicates there were insufficient census numbers available for an statistically acceptable analysis.

The architecture and engineering business industry was collapsed into professional services because of the insufficient data.

The findings show that racial, ethnic, and gender minority groups are nearly universally less likely than nonminority males to be self-employed, even when controlling for correlated characteristics such as education level and age. This indicates that the disparities in self-employment rates for racial, ethnic, and gender minorities are likely to be the result of discrimination in the private sector.

THE INFLUENCE OF RACE, ETHNICITY, AND GENDER ON SELF-EMPLOYMENT EARNINGS

To explore whether race, ethnicity, and gender affect self-employment earnings, we compared minority and female entrepreneurs’ earnings to those of nonminority males in Alaska. As part of this analysis, we controlled for other demographic and economic characteristics that correlate with earnings, such as education level, age, etc. We were able to compare the earnings of similarly situated entrepreneurs in order to determine what amount of the difference in earnings can be attributed to discrimination in the private marketplace.

¹⁹² A relationship between two or more variables is considered to be “statistically significant” depending on the likelihood that the relationship is caused by something other than random chance. MGT incorporates the statistical 95% confidence interval to determine statistical significance. This means that if the same population is sampled on numerous occasions and interval estimates are made on each occasion, the resulting intervals would bracket the true population parameter in approximately 95% of the cases.

First, we derived a set of independent variables known to predict earnings,¹⁹³ including:

- ♦ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority males.
- ♦ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ♦ **Marital Status.**
- ♦ **Ability to Speak English Well.**
- ♦ **Disability Status:** From individuals' reports of health-related disabilities.
- ♦ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ♦ **Owner's Level of Education.**

For the dependent variable, we used 2015-2019 wages from employment for self-employed individuals, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of these variables on income from self-employment for business owners in Alaska. As yielded by the linear regression analysis, each number in **Table 6-4** represents a percentage change in earnings associated with the introduction of the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an African American is -1.013, meaning that a self-employed African American would be predicted to earn 101.30 percent less than a self-employed nonminority male, when controlling for all other relevant variables.

TABLE 6-4. EARNINGS ELASTICITIES OF MINORITY GROUPS
RELATIVE TO NONMINORITY MALES AFTER CONTROLLING
FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS OWNERSHIP CLASSIFICATION	ALL INDUSTRIES	CONSTRUCTION	PROFESSIONAL SERVICES
African American Firms	-1.013	N/A	-1.053
Hispanic American Firms	-0.556	-0.172	-1.219
Asian American Firms	-0.309	0.907	-1.157
Native American Firms	-0.423	-0.028	-0.169
Nonminority Female Firms	-0.419	-0.341	-0.453

Source: PUMS data from 2015-2019 American Community Survey (Alaska) and MGT, calculations using SPSS Statistics software.

Note: Shading and **bold** indicates the estimated "elasticities" for the group were statistically significant at 95% confidence interval. The architecture and engineering business industry was merged with professional Services because of insufficient data. In terms of the regression "elasticity" means the percent change resulting by being a member of one of the M/WBE groups.

N/A indicates there were insufficient census numbers available for analysis.

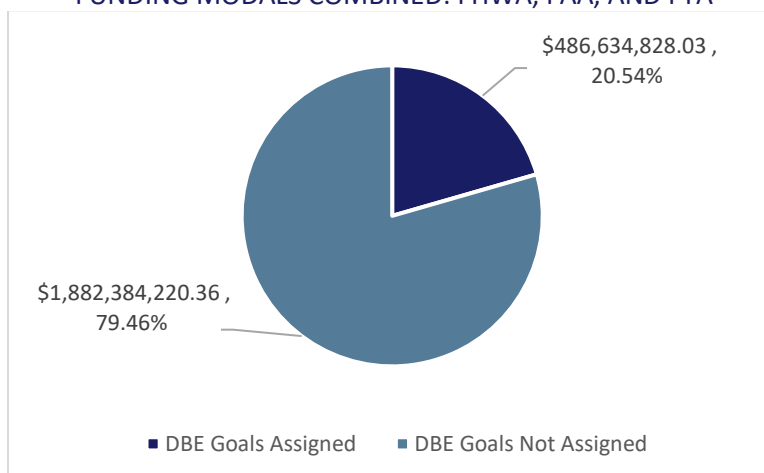
¹⁹³ These predictors are assumed to correlate with earnings based on previous economic research, such as the *Journal of Econometrics*, Vol. 61, Issue 1, which is devoted entirely to the econometrics of labor market discrimination and segregation.

These findings provide further evidence that disparities exist in the private sector in the DOT&PF's geographic and product market areas. The DOT&PF thus has a compelling interest in the continuation of interest public sector remedies so as not to be a passive participant in the discrimination found in the private sector.¹⁹⁴

6.4 NON-GOAL ANALYSIS

MGT also examined whether DBE vendors are utilized at the same rates when there are goals associated with construction projects vs. construction projects without goals. Although, when the results are examined at a total level it shows that M/W/DBEs are faring better on projects without DBE goals, when the results are examined by region and by DBE certified it is shown that in fact M/W/DBEs aren't faring as well. **Exhibit 6-1** shows that during the study period much of the construction dollars awarded (79.46%) were on projects without DBE goals.

EXHIBIT 6-1. NON-GOAL ANALYSIS OF CONSTRUCTION FUNDING MODALS COMBINED: FHWA, FAA, AND FTA



Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by the DOT&PF between October 1, 2014 to September 30, 2019.

Table 6-5 shows the utilization of M/W/DBEs and non-M/W/DBEs on construction projects (all three funding modals) with DBE goals compared to projects with no DBE goals. M/W/DBEs received 16.03 percent of the dollars awarded on projects with DBE goals compared to 18.11 percent of the dollars awarded on projects with no DBE goals. \$340.9 million dollars on projects with no DBE goals were awarded to M/W/DBE construction contractors, whereas \$78.0 million dollars were awarded to M/W/DBE contractors on projects with DBE goals. In terms of DBE certified firms, 9.98 percent of the dollars on projects with DBE goals were awarded to DBE certified firms compared to 6.12 percent of the dollars

¹⁹⁴ **Appendix XX** reports self-employment rates and earnings in greater detail by race, ethnicity, and gender and business category.

awarded on projects with no DBE goals. \$115.2 million dollars on projects with no DBE goals were awarded to DBE construction contractors, whereas \$48.5 million dollars were awarded on projects with DBE goals.

TABLE 6-5. NON-GOAL ANALYSIS OF CONSTRUCTION UTILIZATION
BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FAA, AND FTA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms						
African Americans	\$1,955,273.60	0.40%	\$18,887,191.94	1.00%	\$20,842,465.54	0.88%
American Indians/Alaska Natives	\$46,288,264.79	9.51%	\$61,434,571.27	3.26%	\$107,722,836.06	4.55%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$8,946,878.75	1.84%	\$32,967,402.86	1.75%	\$41,914,281.61	1.77%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$6,407,355.50	0.34%	\$6,407,355.50	0.27%
Hispanic Americans	\$925,840.50	0.19%	\$121,053,531.10	6.43%	\$121,979,371.60	5.15%
Nonminority Women	\$19,904,253.51	4.09%	\$100,113,233.33	5.32%	\$120,017,486.84	5.07%
Total M/W/DBE Firms	\$78,020,511.15	16.03%	\$340,863,286.00	18.11%	\$418,883,797.15	17.68%
Non-M/W/DBE Firms	\$408,614,316.88	83.97%	\$1,541,520,934.36	81.89%	\$1,950,135,251.24	82.32%
TOTAL	\$486,634,828.03	100.00%	\$1,882,384,220.36	100.00%	\$2,369,019,048.39	100.00%
DBE Certified Firms						
African Americans	\$650,890.00	0.13%	\$276,988.98	0.01%	\$927,878.98	0.04%
American Indians/Alaska Natives	\$32,522,581.60	6.68%	\$36,652,816.18	1.95%	\$69,175,397.78	2.92%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$3,001,224.00	0.62%	\$12,219,352.06	0.65%	\$15,220,576.06	0.64%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$1,050,298.50	0.06%	\$1,050,298.50	0.04%
Hispanic Americans	\$751,760.00	0.15%	\$3,574,896.12	0.19%	\$4,326,656.12	0.18%
Nonminority Women	\$11,622,199.19	2.39%	\$61,416,816.79	3.26%	\$73,039,015.98	3.08%
Total DBE Certified Firms	\$48,548,654.79	9.98%	\$115,191,168.63	6.12%	\$163,739,823.42	6.91%
Non-DBE Certified Firms	\$438,086,173.24	90.02%	\$1,767,193,051.73	93.88%	\$2,205,279,224.97	93.09%
TOTAL	\$486,634,828.03	100.00%	\$1,882,384,220.36	100.00%	\$2,369,019,048.39	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by the DOT&PF between October 1, 2014 to September 30, 2019.

Table 6-6 compares the utilization of M/W/DBE contractors by region on construction projects (all three funding modals combined) with DBE goals compared to projects with no DBE goals. As shown in **Table 6-6**, in terms of region and total percentage of construction dollars awarded on projects with no DBE goals assigned, M/W/DBE utilization was higher in the Northern Region (34.35%) than any other region followed by the Central Region (11.43%). In Central and Southcoast Regions M/W/DBEs receive a higher percentage of dollars on projects with DBE goals (14.13% vs. 11.43% in Central Region and 13.23% vs. 10.20% in Southcoast Region).

TABLE 6-6. NON-GOAL ANALYSIS OF CONSTRUCTION UTILIZATION
BY REGION, FUNDING MODALS COMBINED: FHWA, FAA, AND FTA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
CENTRAL REGION						
African Americans	\$650,890.00	0.28%	\$286,393.98	0.03%	\$937,283.98	0.08%
American Indians/Alaska Natives	\$13,445,865.79	5.89%	\$38,717,237.22	3.89%	\$52,163,103.01	4.26%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$1,800,110.00	0.79%	\$10,022,340.89	1.01%	\$11,822,450.89	0.97%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$53,682.00	0.01%	\$53,682.00	0.00%
Hispanic Americans	\$843,830.00	0.37%	\$5,588,378.03	0.56%	\$6,432,208.03	0.53%
Nonminority Women	\$15,546,479.63	6.80%	\$59,075,350.66	5.93%	\$74,621,830.29	6.10%
Total M/W/DBE Firms	\$32,287,175.42	14.13%	\$113,743,382.78	11.43%	\$146,030,558.20	11.93%
Non-M/W/DBE Firms	\$196,187,928.72	85.87%	\$881,700,197.25	88.57%	\$1,077,888,125.97	88.07%
TOTAL	\$228,475,104.14	100.00%	\$995,443,580.03	100.00%	\$1,223,918,684.17	100.00%
NORTHERN REGION						
African Americans	\$1,304,383.60	0.60%	\$18,600,797.96	3.29%	\$19,905,181.56	2.55%
American Indians/Alaska Natives	\$32,842,399.00	15.21%	\$21,215,591.22	3.75%	\$54,057,990.22	6.92%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$2,071,869.00	0.96%	\$15,045,724.91	2.66%	\$17,117,593.91	2.19%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$82,010.50	0.04%	\$115,421,194.32	20.40%	\$115,503,204.82	14.78%
Nonminority Women	\$3,844,036.38	1.78%	\$24,071,789.05	4.25%	\$27,915,825.43	3.57%
Total M/W/DBE Firms	\$40,144,698.48	18.59%	\$194,355,097.46	34.35%	\$234,499,795.94	30.00%
Non-M/W/DBE Firms	\$175,764,647.53	81.41%	\$371,428,148.00	65.65%	\$547,192,795.53	70.00%
TOTAL	\$215,909,346.01	100.00%	\$565,783,245.46	100.00%	\$781,692,591.47	100.00%
SOUTHCOAST REGION						
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$0.00	0.00%	\$1,501,742.83	0.47%	\$1,501,742.83	0.41%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$5,074,899.75	12.01%	\$7,899,337.06	2.46%	\$12,974,236.81	3.57%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$6,353,673.50	1.98%	\$6,353,673.50	1.75%
Hispanic Americans	\$0.00	0.00%	\$43,958.75	0.01%	\$43,958.75	0.01%
Nonminority Women	\$513,737.50	1.22%	\$16,966,093.62	5.28%	\$17,479,831.12	4.81%
Total M/W/DBE Firms	\$5,588,637.25	13.23%	\$32,764,805.76	10.20%	\$38,353,443.01	10.55%
Non-M/W/DBE Firms	\$36,661,740.63	86.77%	\$288,392,589.11	89.80%	\$325,054,329.74	89.45%
TOTAL	\$42,250,377.88	100.00%	\$321,157,394.87	100.00%	\$363,407,772.75	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by the DOT&PF between October 1, 2014 to September 30, 2019.

Table 6-7 shows the utilization of contractors on FHWA-funded construction projects with DBE goals compared to projects with no DBE goals. M/W/DBE contractors received 12.35 percent of the dollars awarded on projects with DBE goals compared to 18.68 percent of the dollars awarded on projects with no DBE goals.

**TABLE 6-7. NON-GOAL ANALYSIS OF CONSTRUCTION UTILIZATION
BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA**

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms						
African Americans	\$1,598,373.60	0.46%	\$18,384,191.94	1.25%	\$19,982,565.54	1.10%
American Indians/Alaska Natives	\$14,484,172.04	4.17%	\$37,587,144.21	2.56%	\$52,071,316.25	2.87%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$6,965,919.75	2.01%	\$19,005,927.35	1.29%	\$25,971,847.10	1.43%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$5,368,227.50	0.37%	\$5,368,227.50	0.30%
Hispanic Americans	\$925,840.50	0.27%	\$102,658,338.94	6.99%	\$103,584,179.44	5.71%
Nonminority Women	\$18,890,316.97	5.44%	\$91,313,866.85	6.22%	\$110,204,183.82	6.07%
Total M/W/DBE Firms	\$42,864,622.86	12.35%	\$274,317,696.79	18.68%	\$317,182,319.65	17.47%
Non-M/W/DBE Firms	\$304,144,901.67	87.65%	\$1,194,039,256.83	81.32%	\$1,498,184,158.50	82.53%
TOTAL	\$347,009,524.53	100.00%	\$1,468,356,953.62	100.00%	\$1,815,366,478.15	100.00%
DBE Certified Firms						
African Americans	\$650,890.00	0.19%	\$276,988.98	0.02%	\$927,878.98	0.05%
American Indians/Alaska Natives	\$1,303,813.85	0.38%	\$27,693,923.68	1.89%	\$28,997,737.53	1.60%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$1,294,265.00	0.37%	\$6,840,273.95	0.47%	\$8,134,538.95	0.45%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$997,140.50	0.07%	\$997,140.50	0.05%
Hispanic Americans	\$751,760.00	0.22%	\$3,261,608.12	0.22%	\$4,013,368.12	0.22%
Nonminority Women	\$11,289,782.90	3.25%	\$58,750,805.99	4.00%	\$70,040,588.89	3.86%
Total DBE Certified Firms	\$15,290,511.75	4.41%	\$97,820,741.22	6.66%	\$113,111,252.97	6.23%
Non-DBE Certified Firms	\$331,719,012.78	95.59%	\$1,370,536,212.40	93.34%	\$1,702,255,225.18	93.77%
TOTAL	\$347,009,524.53	100.00%	\$1,468,356,953.62	100.00%	\$1,815,366,478.15	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by the DOT&PF between October 1, 2014 to September 30, 2019.

Note: Appendix X, Exhibits X-XX to X-XX presents corresponding analyses.

Table 6-8 compares the utilization of M/W/DBE by region on FHWA- funded construction projects with DBE goals compared to projects with no DBE goals. **Table 6-8** shows in terms of region and total percentage of FHWA-funded construction dollars awarded on projects with no DBE goals assigned, M/W/DBE utilization was higher in the Northern Region (34.38%) than any other region followed by the Central Region (11.57%). In Central and Southcoast Regions M/W/DBEs receive a higher percentage of dollars on projects with DBE goals (11.58% vs. 11.57 in Central Region and 15.34% vs. 10.75% in Southcoast Region).

TABLE 6-8. NON-GOAL ANALYSIS OF CONSTRUCTION UTILIZATION
BY REGION, FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
CENTRAL REGION						
African Americans	\$650,890.00	0.36%	\$286,393.98	0.04%	\$937,283.98	0.10%
American Indians/Alaska Natives	\$3,067,557.54	1.70%	\$21,731,760.16	3.04%	\$24,799,317.70	2.77%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$1,429,510.00	0.79%	\$5,693,319.89	0.80%	\$7,122,829.89	0.80%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$524.00	0.00%	\$524.00	0.00%
Hispanic Americans	\$843,830.00	0.47%	\$2,407,669.87	0.34%	\$3,251,499.87	0.36%
Nonminority Women	\$14,847,124.38	8.25%	\$52,606,484.41	7.36%	\$67,453,608.79	7.54%
Total M/W/DBE Firms	\$20,838,911.92	11.58%	\$82,726,152.31	11.57%	\$103,565,064.23	11.57%
Non-M/W/DBE Firms	\$159,123,158.71	88.42%	\$632,083,406.73	88.43%	\$791,206,565.44	88.43%
TOTAL	\$179,962,070.63	100.00%	\$714,809,559.04	100.00%	\$894,771,629.67	100.00%
NORTHERN REGION						
African Americans	\$947,483.60	0.73%	\$18,097,797.96	3.87%	\$19,045,281.56	3.18%
American Indians/Alaska Natives	\$11,416,614.50	8.74%	\$14,353,641.22	3.07%	\$25,770,255.72	4.31%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$461,510.00	0.35%	\$5,474,573.40	1.17%	\$5,936,083.40	0.99%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Hispanic Americans	\$82,010.50	0.06%	\$100,206,710.32	21.41%	\$100,288,720.82	16.76%
Nonminority Women	\$3,529,455.09	2.70%	\$22,760,992.43	4.86%	\$26,290,447.52	4.39%
Total M/W/DBE Firms	\$16,437,073.69	12.58%	\$160,893,715.33	34.38%	\$177,330,789.02	29.63%
Non-M/W/DBE Firms	\$114,177,467.33	87.42%	\$307,039,491.90	65.62%	\$421,216,959.23	70.37%
TOTAL	\$130,614,541.02	100.00%	\$467,933,207.23	100.00%	\$598,547,748.25	100.00%
SOUTHCOAST REGION						
African Americans	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$0.00	0.00%	\$1,501,742.83	0.53%	\$1,501,742.83	0.47%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$5,074,899.75	13.93%	\$7,838,034.06	2.74%	\$12,912,933.81	4.01%

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$5,367,703.50	1.88%	\$5,367,703.50	1.67%
Hispanic Americans	\$0.00	0.00%	\$43,958.75	0.02%	\$43,958.75	0.01%
Nonminority Women	\$513,737.50	1.41%	\$15,946,390.01	5.58%	\$16,460,127.51	5.11%
Total M/W/DBE Firms	\$5,588,637.25	15.34%	\$30,697,829.15	10.75%	\$36,286,466.40	11.27%
Non-M/W/DBE Firms	\$30,844,275.63	84.66%	\$254,916,358.20	89.25%	\$285,760,633.83	88.73%
TOTAL	\$36,432,912.88	100.00%	\$285,614,187.35	100.00%	\$322,047,100.23	100.00%

Source: MGT developed a Master Contract Database based on contracts, Professional Services Agreements, and subrecipient data awarded by the DOT&PF between October 1, 2014 to September 30, 2019.

Note: Appendix X, Exhibits X-XX through X-XX presents the corresponding analyses for FTA- and FAA-funded projects.

6.5 ACCESS TO CREDIT

SMALL BUSINESS ADMINISTRATION, OFFICE OF ADVOCACY

In February 2018 Alicia Robb, Ph.D., conducted a study on behalf of the Small Business Administration entitled, “*Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity For U.S. Employer Firms.*” The study used U.S. Census Bureau 2014 data from the Annual Survey of Entrepreneurs. Dr. Robb examined differences in financing and access to capital for small firms. Findings iterated other reports – there are disparities in the access and cost of capital between minority and non-minority owned firms. The barriers to affordable credit have a negative impact on the profitability and stability of minority owned firms.

She reports finding that among Blacks or African Americans who chose not to apply for financing despite needing it, nearly 60 percent said they didn’t apply because they didn’t think they would be approved by the lender.

Here we provide some summary statistics from this report.

TABLE 6-9. NEGATIVE IMPACT FROM ACCESS TO FINANCIAL CAPITAL

	Minority	Non-Minority
Construction	18.2%	11.5%
Professional Services	13.6%	7.2%

Source: Table 17, *Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity For U.S. Employer Firms.*

TABLE 6-10. NEGATIVE IMPACT FROM COST OF FINANCIAL CAPITAL

	Minority	Non-Minority
Construction	15.8%	11.7%
Professional Services	12.3%	7.1%

Source: Table 17, *Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity For U.S. Employer Firms*.

TABLE 6-11. DID NOT RECEIVE AMOUNT REQUESTED

	Percentage
White	24.50%
Black	53.00%
Asian	34.20%
Hispanic	39.00%
Minority	38.60%
Non-Minority	23.60%

Source: Table 9, *Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity For U.S. Employer Firms*.

TABLE 6-12. FIRMS 16+ YEARS OLD DID NOT RECEIVE AMOUNT REQUESTED

	Percentage
Minority	30.20%
Non-Minority	14.30%

Source: Table 11, *Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity For U.S. Employer Firms*.

Dr. Robb also provides information found in the 2015 study entitled, “Rejected, Shackled, and Alone: The Experience of Systematic Restricted Consumer Choice Among Minority Entrepreneurs.”¹⁹⁵ This study reports on testing that was done regarding applying for business credit using testers as applicants. Findings included:

In comparison to white testers, minorities were more often asked to provide:

- ♦ business financial statements - 83% vs. 50%
- ♦ income-tax returns – 86% vs. 52%
- ♦ bank account information – 25% vs. 0%
- ♦ personal financial asset details – 60% vs. 22 %
- ♦ credit-card debt information – 42% vs. 13%

¹⁹⁵ Bone, S., Christensen, G., and Williams, J. 2015. Rejected, shackled, and alone: The experience of systematic restricted consumer choice among minority entrepreneurs, *Journal of Consumer Research*.

She writes, “Overall, minorities were consistently offered less assistance and subjected to greater scrutiny, in comparison with the white testers” (p. 37).

MINORITY BUSINESS DEVELOPMENT AGENCY

The U.S. Department of Commerce, Minority Business Development Agency published a report in January 2010 entitled, “Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs.” Findings confirmed that access to affordable credit remains one of the main impediments to minority-owned firm growth.

- ◆ General findings show that minority-owned businesses: pay higher interest rates on loans; are more likely to be denied credit; and, are less likely to apply for loans because they fear their applications will be denied.
- ◆ Among high sales firms 52% of non-minority firms received loans compared with 41% of minority firms.
- ◆ The average loan amount for all high sales minority firms was \$149,000. The non-minority average was more than twice this amount at \$310,000.
- ◆ Among firms with gross receipts under \$500,000, loan denial rates for minority firms were about 3 times higher, at 42%, compared to those of non-minority-owned firms, 16%.
- ◆ Among firms with gross receipts under \$500,000, 33% of minority firms did not apply for loans because of fear of rejection compared to 17% of non-minority firms.
- ◆ For all firms, minority firms paid 7.8% on average for loans compared with 6.4% for non-minority firms.

THE FEDERAL RESERVE SMALL BUSINESS CREDIT SURVEY

The Small Business Credit Survey (SBCS) is a national collaboration of the 12 Reserve Banks of the Federal Reserve System. This survey has been conducted annually since 2015. Survey responses are collected from firms throughout the United States and while there is statistics provided regarding how many responses are from each census region and division, the data provided online does not report information by race by division. The reports vary somewhat from year to year. For example, the 2016 reports include specific reports for minority and women owned firms; and, the 2018 reports included one regarding disaster-affected firms. Overall, each year’s report documents that minority- and women-owned firms, and in particular, Black-owned firms, have less access to credit and pay more for credit than similarly situated white-owned firms. Data from four consecutive years documents the continuing challenge that minority-owned firms, and Black-owned firms in particular, face regarding access to, and cost of, credit. Summary information from reports for employer firms is provided below¹⁹⁶.

¹⁹⁶ Source: Small Business Credit Survey, Federal Reserve Banks.

SBCS 2016

REPORT ON MINORITY-OWNED FIRMS

The 2016 SBCS, which was fielded in Q3 and Q4 2016, yielded 7,916 responses from employer firms with race/ethnicity information in 50 states and the District of Columbia.

- ◆ Black-owned firm application rates for new funding are 10 percentage points higher than White-owned firms, but their approval rates are 19 percentage points lower.
- ◆ 40% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 14% of White-owned firms.
- ◆ Looking at just firms that were approved for at least some financing, when comparing minority- and nonminority-owned firms with good credit scores, 40% of minority-owned firms received full amount sought compared to 68% of nonminority-owned firms.
- ◆ Black-owned firms report more credit availability challenges (58% vs. 32%) and difficulty obtaining funds for expansion (62% vs. 31%) than White-owned firms.

REPORT ON WOMEN-OWNED FIRMS

- ◆ Low credit risk women-owned firms were less likely to be approved for business loans than their low credit risk male counterparts (68% compared to 78%).
- ◆ Sixty-four percent of women-owned firms reported a funding gap, receiving only some or none of the financing sought, compared to 56% of men-owned firms.
- ◆ Fewer women-owned firms received all of the funding sought than men-owned firms and more women received none. Among low credit risk firms, 48% of women-owned firms received all of the financing requested, compared to 57% of men-owned firms.

SBCS 2017

REPORT ON EMPLOYER FIRMS

Fielded in Q3 and Q4 2017, the survey yielded 8,169 responses from small employer firms in the 50 states and the District of Columbia.

- ◆ Minority-owned firms report higher rates of financial challenges in the previous 12 months due to credit availability than white-owned firms. For firms with revenues less than \$1M, Black-owned firms (58%) are at almost twice the rate of white-owned firms (32%) (Asian 42%, Hispanic 45%). For firms with revenues at more than \$1M, we see the same ratio: Black-owned firms, 49% and White-owned firms, 24% (Asian 38%, Hispanic 34%).
- ◆ Rates of firms reporting receiving at least some of the financing requested: for Black-owned firms, 61%, and for White-owned firms 80% (Asian 73%, Hispanic 74%).
- ◆ For low credit risk firms, 85% of nonminority-owned firms received at least some of the financing requested compared with only 75% for similarly situated minority-owned firms.

- ◆ For low credit risk firms receiving full financing, 68% of nonminority owned firms were approved compared to only 40% of minority-owned firms.

SBCS 2018

REPORT ON EMPLOYER FIRMS

There were 8,072 responses received for this survey from firms throughout the United States.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 50%; Asian, 33%; Hispanic, 41%; and White-owned firms, 28%.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 59% for Black-owned firms.
- ◆ Rates of firms receiving the full amount requested ranged from a high of 49% for White-owned firms to a low of 23% for Black-owned firms.
- ◆ 38% of black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 12% of white-owned firms.

SBCS 2019

REPORT ON MINORITY-OWNED FIRMS & REPORT ON EMPLOYER FIRMS

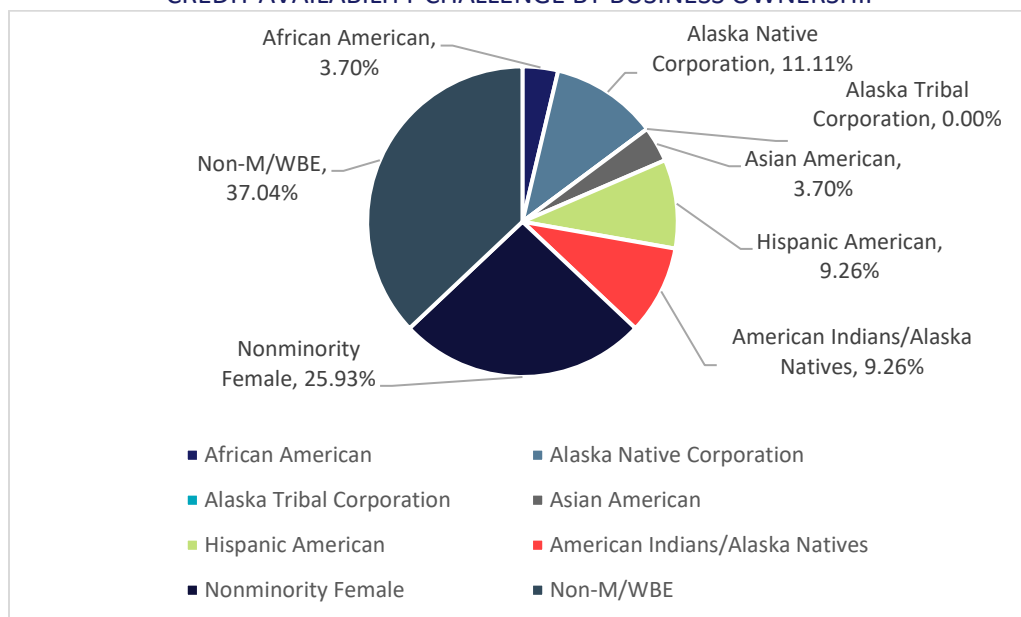
The annual survey of businesses was fielded in the third and fourth quarters of 2018 and generated 6,614 responses from employer firms.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 51%; Asian, 36%; Hispanic, 40%; and White-owned firms, 30%.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 62% for Black-owned firms.
- ◆ Rates of firms receiving the full amount requested ranged from a high of 49% for White-owned firms to a low of 31% for Black-owned firms.
- ◆ 28% of black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 13% of white-owned firms.
- ◆ On average, Black- and Hispanic-owned firm applicants received approval for smaller shares of the financing they sought compared to White-owned small businesses that applied for financing.
- ◆ Larger shares of Black- and Hispanic-owned firm applicants did not receive any of the financing they applied for—38% and 33%, respectively—compared to 20% of White-owned business applicants.
- ◆ A larger share of White-owned business applicants received approval for all the financing they applied for: 49%, compared to 39% of Asian-, 35% of Hispanic-, and 31% of Black-owned firm applicants.

SURVEY OF VENDORS: ACCESS TO CREDIT

In MGT’s survey of vendors for the DOT&PF, vendors were asked if credit availability had been a challenge in the past twelve months. **Exhibit 6-2** shows that M/W/DBEs accounted for 62.96 percent of firms that said credit availability has been a challenge in the past year.

EXHIBIT 6-2. DOT&PF SURVEY OF VENDORS
CREDIT AVAILABILITY CHALLENGE BY BUSINESS OWNERSHIP



Source: Responses from survey conducted by Oppenheim Research, 2020.

When asked the primary reason for not applying for credit, 7 M/W/DBE firms responded that they were discouraged from applying for credit. Of the 19 respondents that said their credit application was not approved, 68.42 percent of respondents were M/W/DBEs. Respondents cited insufficient business history as the main reason for their application being denied.

6.6 CONCLUSION

The private sector analyses outlined above all point in the same direction: there are significant disparities in the utilization of available minority- and women-owned firms in the private sector in the DOT&PF’s market area. The DOT&PF has a compelling interest to ensure that it does not become a passive participant in that discrimination, as established by the Supreme Court in *Croson*.¹⁹⁷ To that end, we believe that the remedial programs implemented by the DOT&PF and described in **Chapter 3** are appropriate and proportional responses to the discrimination we have identified in the private sector.

¹⁹⁷ *Croson*, 488 U.S. at 492

In the disparity analysis for the DOT&PF that we presented in **Chapter 5**, we determined that the DOT&PF was underutilizing M/W/DBE Firms- owned firms on both the construction and professional services business categories. There were some specific product categories where firms owned by a minority subgroup were overutilized, such as Alaska Native Corporation-owned construction and professional services, Hispanic American-owned construction firms, and American Indian/Alaska Native-owned professional services firms. However, when the private sector analysis is considered in conjunction with the DOT&PF disparity indices, it becomes clear that the DOT&PF's current program is required in order to ensure that the DOT&PF does not become a passive participant in discrimination.

CHAPTER 7. ANECDOTAL ANALYSIS

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



7.1 INTRODUCTION

The following sections present MGT of America’s (MGT) approach to collecting anecdotal information, the methods employed, and the quantitative and qualitative results of the data collected.

Anecdotal evidence must provide support for statistical findings of disparity and help to explain and lend credence to statistical results as discussed in **Chapter II: Legal Review**. MGT used a combination of surveys, public meetings, focus groups and in-depth interviews to collect anecdotal information and to identify issues that were common to businesses in the market area during the study period of October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).

In-depth interviews, focus groups, and public meeting responses were edited for grammar. Otherwise, responses were unfiltered and unedited. It should be noted that the anecdotal responses are based solely on the perceptions and opinions of individuals who provided input during collection of anecdotal information. The evidentiary weight of these opinions depends on how much they are corroborated by statements of others and the quantitative data in the report.

CHAPTER SECTIONS



- 7.1 Introduction
- 7.2 Methodology
- 7.3 Demographics
- 7.4 Barriers to Doing Business with Alaska Department of Transportation & Public Facilities
- 7.5 DBE Program
- 7.6 Prime Contractor Practices
- 7.7 Access to Capital
- 7.8 Discrimination and Disparate Treatment
- 7.9 Suggested Remedies from Anecdotal Participants
- 7.10 Conclusions

7.2 METHODOLOGY

The U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989) (*Croson*) provided the approach to collecting and analyzing anecdotal information for this study. Specifically, race-conscious programs must be supported by strong documentation of discrimination, including evidentiary findings that go beyond the demographics of a community. Anecdotal information can bolster the quantitative analyses of contract expenditures to explain whether or not minority business creation, growth, and retention are negatively affected by discrimination. In *Croson*, the Court held that anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such information can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to minority- and women-owned business enterprise (M/WBE) participation in contract opportunities.

MGT’s anecdotal methodology utilized a multipronged approach that included in-depth interviews, focus groups, public meetings, survey responses, and anecdotal data collected via the disparity study website. The collection and analysis of anecdotal data is used in conjunction with other research tools to provide context and to help explain findings based on quantitative data analysis. Unlike conclusions derived from other types of analysis in this report, the conclusions derived from anecdotal analysis do not rely solely on quantitative data. Anecdotal analysis also utilizes qualitative data to describe the context of the

examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate.

MGT's experience conducting disparity studies has shown that multiple methods of anecdotal data collection provide more comprehensive information than methodologies using a single-pronged approach. In conjunction with the quantitative data, MGT was also able to draw inferences from this data as to the prevalence of obstacles perceived as limiting the participation of DBEs in DOT&PF's procurement transactions.

DBE and non-DBE primes and subcontractors were randomly selected from DOT&PF's Master Vendor Database (discussed in **Chapter 4: Market Area and Utilization Analyses**) to ensure the validity and integrity of anecdotal data collection. Random selections were made for each anecdotal activity to ensure a broad cross section of construction, architecture, engineering, and land surveyors, and other professional services firms. From the samples pulled, DBEs and non-DBEs were contacted to participate in surveys or in-depth interviews. A breakdown of participants is discussed within this chapter.

SURVEY OF VENDORS

The survey of vendors gathered information on business ownership, work performed and/or bid with DOT&PF, work bid and/or performed in the private sector, and barriers, perceived or real, that prevented firms from doing business with DOT&PF during the study period. During the months of June 2020 through September 2020, businesses listed in the master vendor database were surveyed to solicit information about their firms and experiences with DOT&PF. MGT succeeded in collecting data in proportion to the distribution of DBEs and non-DBEs in the state. Oppenheim Research, a Florida-based woman-owned business research firm, administered a controlled survey using the **Appendix D-A – Survey of Vendors Instrument** which resulted in 393 completed surveys with owners and representatives. Throughout this chapter several charts detail selected survey results. Included in **Appendix D-B – Survey of Vendors Results** is the complete survey of vendor results.

Disparity study surveys are commonly plagued by sample size limitations, especially when attempting to gather a representative sample from minority business populations where low minority numbers pose problems. For example, African American, Asian Indian/Pacific Islander, and Hispanic American business participation was very limited in this case because there was an insufficient number of identified firms to permit a valid and representative sample. This problem is compounded when analyses are stratified further by business type. Insufficient sample sizes can pose problems for the statistical confidence of the results. Although MGT's goal is to report data that can satisfy the 95 percent confidence level, this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard.

PUBLIC MEETINGS

MGT conducted two community engagement meetings with business owners, individuals, and representatives on:

- ♦ May 29, 2020 via Teletownhall Meeting

- ♦ June 19, 2020 via Teletownhall Meeting

Firms, DBEs included, that have done business with or were interested in doing business with DOT&PF were invited to attend. The community engagement meetings were advertised on DOT&PF's disparity study website and emailed to vendors in DOT&PF's database using **Appendix E: Community Engagement Notice**. The Notice was also distributed to known business associations and trade organizations in the market area. Teletownhall Meetings provided administrative support and event coordination of hearings. The community engagements were recorded and MGT used these recordings as part of this chapter.

IN-DEPTH INTERVIEWS

In-depth interviews were conducted with primes and subcontractors, both DBE and non-DBE, during July and August 2020 and additional interviews during October and November 2020. To obtain interviewees, firms not selected for other anecdotal activities were randomly selected from DOT&PF's master vendor database then emailed or telephoned confirmation letters after agreeing to be interviewed. The personal interviews gathered information regarding the firm's primary line of business; ethnicity and education/training background of the owner; business history; size and gross revenues during selected calendar and/or fiscal years; and the firms' experiences in conducting or attempting to conduct business with DOT&PF, both directly as a prime and/or as a subcontractor. While the interviewer or facilitator used an interview guide to solicit input from participants, the interviews provided latitude for additional information gathering on issues unique to the respondents' experiences. **Appendix-F: In-depth Interview Guide** was used and included questions designed to establish a profile for each business. Additionally, MGT asked questions related to experiences with the DBE program, and instances of disparate treatment and/or discrimination experienced or perceived by the firm while conducting or attempting to conduct business with DOT&PF. Donaldson Consulting, LLC conducted the in-depth interviews. Donaldson Consulting asked follow-up questions to obtain further clarification or information as necessary.

FOCUS GROUPS

Focus groups were conducted by Suzanne Donaldson of Donaldson Consulting, LLC. The focus group sessions were held via two separate Zoom sessions due to the COVID-19 pandemic. Participants were chosen by randomly sampling of those vendors that had not participated previously in any of the other anecdotal activities. Donaldson Consulting then emailed and called these vendors to invite them to the focus groups. These focus groups occurred during the month of October 2020. In each group session, **Appendix-G: Focus Group Guide** was used to pose a series of open-ended questions on doing business or attempting to do business with DOT&PF to each group to solicit responses and create discussion around DOT&PF's business climate.

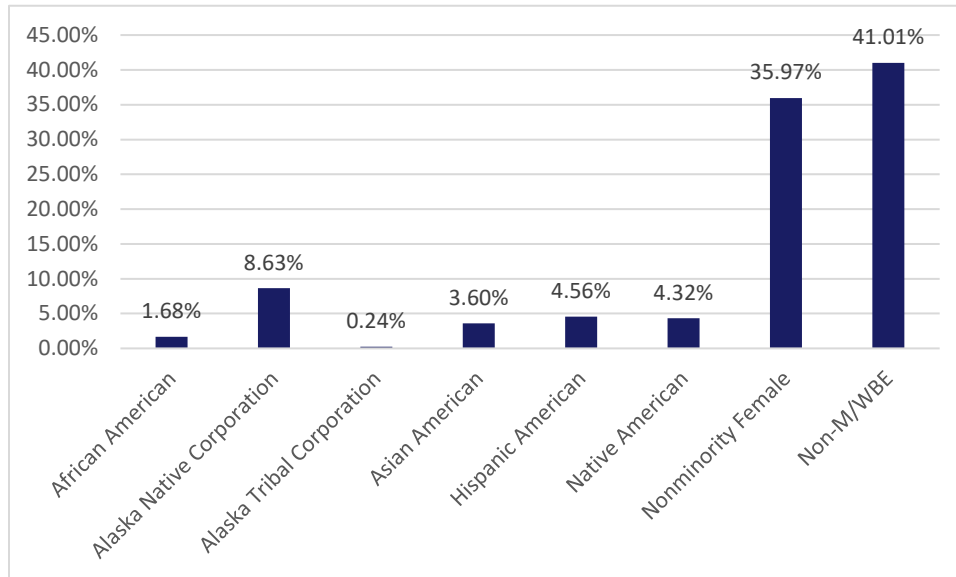
7.3 DEMOGRAPHICS

The demographic characteristics of the survey of vendors, public meetings, in-depth interview, and focus group participants in the collection of anecdotal information are described in the sections below.

SURVEY OF VENDORS DEMOGRAPHICS

The survey of vendors allowed MGT to reach a broader segment of the business population in a more cost-effective and time-efficient manner. **Exhibit 7-1** provides the race, ethnicity, and gender of the respondents that participated in the survey.

EXHIBIT 7-1. DOT&PF SURVEY OF VENDORS
BUSINESS OWNERSHIP CLASSIFICATION



Source: Responses from survey conducted by Oppenheim Research, 2020.

Table 7-1 shows that, of the firms surveyed, 60.43 percent primarily bid as a prime, 21.58 percent primarily bid as a subcontractor, and 17.99 percent bid as both a prime and subcontractor. **Table 7-2** details the certification types of the survey participants.

TABLE 7-1. DOT&PF SURVEY OF VENDORS
BID TYPE BY BUSINESS OWNERSHIP CLASSIFICATION

Business Ownership Classification	Bid as a Prime	Bid as a Subcontractor	Bid as a Prime and Subcontractor
African American	0.72%	0.48%	0.48%
Alaska Native Corporation	5.52%	0.72%	2.40%
Alaska Tribal Corporation	0.24%	0.00%	0.00%
Asian American	2.16%	0.48%	0.96%
Hispanic American	1.92%	1.20%	1.44%
Native American	3.12%	0.72%	0.48%
Nonminority Female	23.98%	7.19%	4.80%
Non-M/WBE	22.78%	10.79%	7.43%
Total	60.43%	21.58%	17.99%

Source: Responses from survey conducted by Oppenheim Research, 2020.

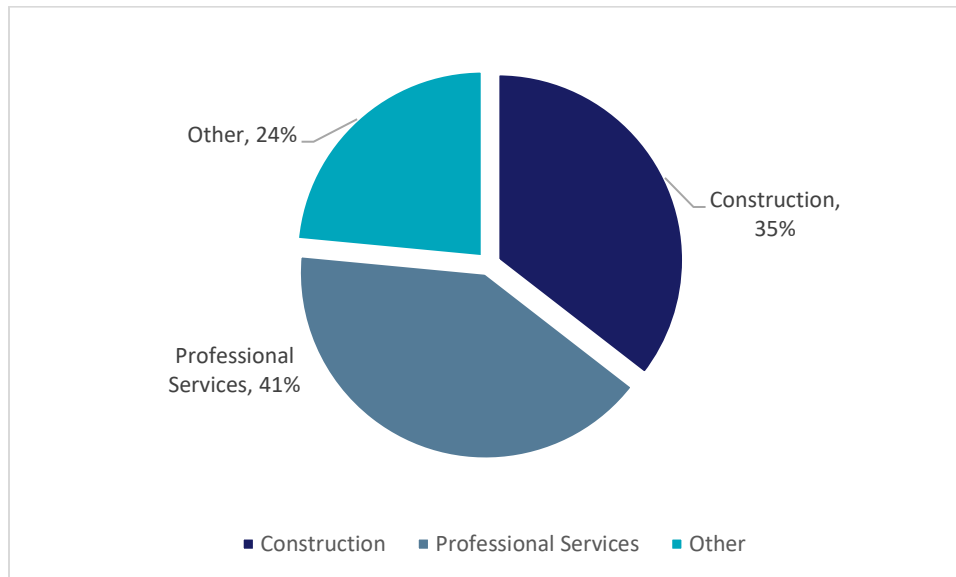
TABLE 7-2. DOT&PF SURVEY OF VENDORS
CERTIFICATION TYPES

Certification Type	Number of Responses	Percent of Survey Respondents
Minority Business Enterprise (MBE)	47	11.27%
Woman Business Enterprise (WBE)	67	16.07%
Disadvantaged Business Enterprise (DBE)	40	9.59%
Small Business Enterprise (SBE)	85	20.38%
Other Certification	13	3.12%

Source: Responses from survey conducted by Oppenheim Research, 2020.

Exhibit 7-2 categorizes the distribution of respondents based on their types of services. The business industries for the study were Construction, and Professional Services. The “Other” industry category indicates that the primary line of business is not associated with the business industries in the study. This business category was indicated by the business themselves when they were interviewed. Definitions of business industries are discussed in **Chapter 3, Market Area and Utilization**.

EXHIBIT 7-2. DOT&PF SURVEY OF VENDORS
PRIMARY LINE OF BUSINESS



Source: Responses from survey conducted by Oppenheim Research, 2020.

Several survey questions were asked to determine the capacity of the respondents. **Table 7-3, Table 7-4,** and **Table 7-5** detail the size of the firms by the number of employees, the largest prime contracts, and largest subcontracts awarded during the study period October 1, 2014 to September 30, 2019. **Table 7-3** shows that 54.09 percent of the firms surveyed have 1 to 4 employees.

**TABLE 7-3. DOT&PF SURVEY OF VENDORS
NUMBER OF EMPLOYEES BY BUSINESS OWNERSHIP CLASSIFICATION**

Business Ownership Classification	1 to 4 Employees	5 to 9 Employees	10 to 19 Employees	20 to 49 Employees	50 to 499 Employees	500 or more Employees
African American	1.68%	0.00%	0.00%	0.00%	0.00%	0.00%
Alaska Native Corporation	1.68%	1.20%	3.85%	1.68%	0.00%	0.24%
Alaska Tribal Corporation	0.24%	0.00%	0.00%	0.00%	0.00%	0.00%
Asian American	1.68%	0.48%	0.00%	0.96%	0.24%	0.24%
Hispanic American	2.16%	1.20%	0.24%	0.96%	0.00%	0.00%
Native American	1.68%	1.44%	0.24%	0.48%	0.48%	0.00%
Nonminority Female	20.43%	5.29%	3.61%	3.37%	2.16%	0.96%
Non-M/WBE	24.52%	6.01%	3.85%	3.85%	2.64%	0.24%
Total	54.09%	15.63%	11.78%	11.30%	5.53%	1.68%

Source: Responses from survey conducted by Oppenheim Research, 2020.

Table 7-4 shows the dollar range of the largest contract awarded to respondents during the study period. Of those that responded to the survey, 16.51 percent reported that they were awarded a contract over \$1 million.

**TABLE 7-4. DOT&PF SURVEY OF VENDORS
LARGEST PRIME CONTRACT AWARDED BY BUSINESS OWNERSHIP CLASSIFICATION**

Business Category	None	Up to \$50,000	\$50,001 to \$100,000	\$100,001 to \$200,000	\$200,001 to \$300,000	\$300,001 to \$400,000	\$400,001 to \$500,000	\$500,001 to \$1 million	Over \$1 million	Don't Know
African American	0.31%	0.61%	0.00%	0.31%	0.00%	0.00%	0.31%	0.00%	0.00%	0.00%
Alaska Native Corporation	0.61%	0.92%	0.61%	0.61%	0.92%	1.22%	0.61%	1.53%	2.45%	0.61%
Alaska Tribal Corporation	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.31%
Asian American	0.31%	1.53%	0.00%	0.00%	0.61%	0.61%	0.00%	0.31%	0.61%	0.00%
Hispanic American	1.22%	0.61%	0.31%	0.31%	0.92%	0.00%	0.31%	0.61%	0.00%	0.00%
Native American	0.61%	0.92%	0.61%	0.31%	0.61%	0.00%	0.31%	0.31%	0.92%	0.00%
Nonminority Female	6.42%	11.01%	3.36%	1.83%	1.53%	0.92%	1.53%	2.75%	5.50%	1.83%
Non-M/WBE	3.36%	10.40%	4.28%	3.67%	0.92%	0.92%	1.22%	3.36%	7.03%	3.36%
Total	12.84%	25.99%	9.17%	7.03%	5.50%	3.67%	4.28%	8.87%	16.51%	6.12%

Source: Responses from survey conducted by Oppenheim Research, 2020.

Table 7-5 details the dollar ranges of work performed as a subcontractor on the largest contract awarded during the study period. A majority of subcontractors that responded (29.70%) are in the under \$50,000 range.

TABLE 7-5. DOT&PF SURVEY OF VENDORS
LARGEST SUBCONTRACT AWARDED BY BUSINESS OWNERSHIP CLASSIFICATION

Business Ownership Classification	None	Up to \$50,000	\$50,001 to \$100,000	\$100,001 to \$200,000	\$200,001 to \$300,000	\$300,001 to \$400,000	\$400,001 to \$500,000	\$500,001 to \$1 million	Over \$1 million	Don't Know
African American	1.21%	0.61%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.61%
Alaska Native Corporation	2.42%	2.42%	0.00%	0.61%	0.00%	0.00%	0.61%	0.00%	1.21%	0.61%
Alaska Tribal Corporation	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Asian American	0.61%	1.21%	0.00%	0.00%	0.61%	0.61%	0.00%	0.61%	0.00%	0.00%
Hispanic American	0.00%	1.82%	0.00%	1.21%	1.82%	0.61%	0.00%	0.61%	0.61%	0.00%
Native American	0.00%	0.61%	0.61%	0.61%	0.61%	0.00%	0.00%	0.00%	0.61%	0.00%
Nonminority Female	4.24%	10.30%	3.64%	1.21%	1.82%	0.00%	0.61%	1.21%	3.64%	3.64%
Non-M/WBE	4.85%	12.73%	5.45%	3.64%	1.82%	3.64%	3.03%	3.03%	1.21%	6.67%
Total	13.33%	29.70%	9.70%	7.27%	6.67%	4.85%	4.24%	5.45%	7.27%	11.52%

Source: Responses from survey conducted by Oppenheim Research, 2020.

PUBLIC MEETINGS DEMOGRAPHICS

Collective attendance at the virtual public meetings included 121 firms, individuals, or association representatives. Anecdotal testimony was provided by nine firms about their experiences doing business with DOT&PF and/or primes contracted with DOT&PF.

IN-DEPTH INTERVIEW DEMOGRAPHICS

The efforts of Donaldson Consulting, LLC resulted in 17 firms that were interviewed.

- ◆ Of the 14 prime firms that were interviewed, the ethnic and gender composition included one Native American, three nonminority women, one Alaska Native Corporation, and five non-M/W/DBEs. There were no Asian American, Hispanic American, or African American participants interviewed.

FOCUS GROUP DEMOGRAPHICS

The efforts of Donaldson Consulting, LLC resulted in six firms that participated in the focus group.

- ♦ Of the six firms, the ethnic and gender composition included one Native American, three nonminority women, and two Alaska Native Corporations. Five firms' primary line of business was in architecture, engineering, and professional services and the remaining firm's primary line of business was construction.

7.4 BARRIERS TO DOING BUSINESS WITH ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

In the normal course of business, entrepreneurs may face certain barriers when establishing and operating a business enterprise. Several factors may also prevent a business from being selected for a contract. In this section, MGT documents participant responses from the survey of vendors, interviews, community engagements, and focus groups concerning barriers participants faced in the procurement process and factors that prevented them from winning contracts or purchase orders.

PROCUREMENT PROCESS

SURVEY OF VENDORS

Questions for the survey of vendors were designed to gather business owners' perceptions about the procurement process and their experiences when doing business or attempting to do business with DOT&PF. An analysis of the responses showed that the majority of firms responded to questions about barriers to doing business with DOT&PF.

Among the 201 M/W/DBEs who responded to survey questions about barriers to doing business, the biggest concern for M/W/DBE primes was competing with large firms (13.43% M/W/DBE primes). Similarly, the biggest concern for M/W/DBE subcontractors was also competing with large firms (25.84% of M/W/DBE subcontractors). Other key issues for M/W/DBE respondents participating in the survey are noted as follows. Detailed results for all respondents to questions are provided in **Appendix D-A: Survey of Vendors Results**.

PRIMES:

- ♦ Slow payment or non-payment for project work – 10.95%
- ♦ Financing – 6.47%
- ♦ Insurance requirements/general liability, professional liability, etc.– 6.47%
- ♦ Unnecessarily restrictive contract specifications – 6.47%
- ♦ Short or limited time given to prepare bid package or quote – 6.47%

SUBCONTRACTORS:

- ◆ Slow payment or nonpayment for project work – 11.24%
- ◆ Contract too large – 11.24%
- ◆ Informal network of primes and subcontractors excluding my company from doing business – 11.24%

ANECDOTAL RESPONSES - PRIMES

The following section provides a summary of anecdotal comments from prime firms provided during the focus groups, personal interviews, or public meetings when asked about barriers they face in doing business or attempting to do business with DOT&PF.

- ◆ Obstacles in the Procurement Process are noted as firms' perceptions or experiences of whether there are excessive procedures that create problems in the business owners' attempts to comply with the requirements of the procurement process.
 - Both M/W/DBE and non-M/W/DBE firms noted proposal and bid specifications, unnecessarily restrictive contract specifications and/or the ability to compete with large companies as a barrier to attempting to do work or working on any of DOT&PF's projects.
- ◆ Meeting DBE Goal is noted as a barrier when attempting to identify DBE firms.
 - Participant responses to this question were divided. Most participants stated that they meet the DBE goals without any problems; however, some firms did mention difficulty in identifying DBE firms.

ANECDOTAL RESPONSES - SUBCONTRACTORS

The following section provides a summary of anecdotal comments from subcontractors provided during the focus groups, personal interviews, or public meetings when asked about barriers they face in doing business or attempting to do business with primes on DOT&PF projects.

- ◆ Obstacles in the Bid Process are noted as firms' perceptions or experiences of whether there are excessive or unfair procedures that create problems in the business owners' attempts to comply with bid requirements.
 - Participants stated that the perception that DBEs do not have the capacity or expertise to perform the work is a barrier. The barrier is that primes will either not accept their bid or shop their numbers so they are no longer the lowest bidder.
 - Participants from small organizations faced difficulty in competing with larger firms. The process does not favor or help small DBEs.
 - Both M/W/DBE and non-M/W/DBE stakeholders indicated additional barriers to attempting to work or working on projects as a subcontractor on DOT&PF projects including: short or limited time given to prepare bid package or quote; unnecessarily restrictive contract specifications; changes in the scope of work (after work began); and an informal network of prime contractors and subcontractors that has excluded their company from doing business.

- Participants brought up a lack of transparency in the procurement process. For small procurement, while the RFPs include what needs to be in the proposal, they do not always provide how they are scored or how it is decided. Further, for both small and large procurement, participants noted they receive very little feedback when asking for information on why/how the winners are selected, limiting their ability to learn what they can do differently in the future to be successful.

7.5 DBE PROGRAM

The following section provides a summary of additional anecdotal comments concerning DBE program requirements.

ANECDOTAL RESPONSES

- ◆ Participants stated that contract bundling has made it harder for small DBEs to be competitive in the bidding process. Contractors who are not large enough to perform the whole job, but who could provide one piece, have to bid to other primes for a portion of the project rather than being able to compete on their own.
- ◆ Participants stated that they did not feel comfortable filing formal complaints because of fear of retribution in a small community.

7.6 PRIME CONTRACTOR PRACTICES

Participants were asked to discuss their experiences working with or observing primes contracted by DOT&PF or in the private sector marketplace.

ANECDOTAL RESPONSES

- ◆ Subcontractors stated there were some prime practices that have been barriers to their firms' success on DOT&PF projects. Anecdotal comments from subcontractors included: being told by the prime that their firm is the low bidder but the subcontract was awarded to a non-DBE firm and/or to a subcontractor that the prime has worked with before. Since DOT&PF cannot force primes to use a specific subcontractor, some felt there was no recourse for DBEs in the program to get those jobs even when competitively bidding.
- ◆ In addition, DBE program participants felt their DBE status did not help them win jobs with primes. Small firms and subcontractors in particular felt there was little to no incentive for big firms to procure services from DBEs; prior to the race neutral program big firms needed a DBE to get points for specific parts of proposals but now they don't. As a result, large firms opt to develop or provide those services in house rather than contracting them out. Or they are included on a bid, possibly to satisfy the "good faith efforts" requirements, and then later dropped by the prime or because DOT decided to do the work in house. Fear of retribution has prevented some from pursuing the issue.

7.7 ACCESS TO CAPITAL

The following sections provide survey results and a summary of anecdotal comments concerning participants' experiences accessing financial capital during the study period.

SURVEY OF VENDOR RESPONSES

Survey respondents were asked if they applied for credit during the study period and whether they were approved or denied. If their credit application was denied, they were asked what they believed was the basis of their denial. Of the 101 (24.22% of total) respondents that applied for credit, 63.37 percent were M/W/DBEs. 20.31 percent of M/W/DBE applicants (thirteen firms) were denied loans; six of these thirteen firms denied loans were Nonminority female-owned firms.

ANECDOTAL RESPONSES

- ◆ Prime and subcontractor participants did not have an overwhelming concern about access to capital. However, some participants did express concerns with access to capital due to operating expenses.

7.8 DISCRIMINATION AND DISPARATE TREATMENT

Survey, in-depth interview, and public meeting participants were asked if they experienced discriminatory or disparate behavior by DOT&PF, its primes, or in the private sector during the study period.

SURVEY OF VENDORS RESPONSES

Table 7-6 illustrates the percentage of respondents who stated that they experienced discriminatory behavior from either DOT&PF, prime contractors contracted by DOT&PF, or while conducting business in the private sector marketplace.

TABLE 7-6. DOT&PF SURVEY OF VENDORS
DISCRIMINATION BY M/W/DBE STATUS

	By DOT&PF	By Primes	Private Sector
M/W/DBE Primes	3.48%		
Non-M/W/DBE Primes	3.17%		
M/W/DBE Subcontractors		6.74%	
Non-M/W/DBE Subcontractors		5.26%	
M/W/DBE Firms			12.20%
Non-M/W/DBE Firms			9.94%

Source: Responses from telephone survey conducted by Oppenheim Research, 2020.

With respect to disparate treatment M/W/DBE respondents reported:

- ◆ Seldom or never being solicited when there were no M/W/DBE goals – 59.55%.

- ◆ Unequal or unfair treatment in the private sector – 6.50%.
- ◆ Experiencing or observing a situation in which a prime contractor includes minority or woman subcontractors on a bid or proposal and then drops or replaces the company as a subcontractor after winning the award for no legitimate reason on non-DOT&PF projects – 4.49%.
- ◆ Double standards in performance from primes – 4.49%

7.9 SUGGESTED REMEDIES FROM ANECDOTAL PARTICIPANTS

While collecting anecdotal data, participants were asked to provide their suggestions and recommendations for improving the procurement process, increasing M/W/DBE utilization, or improving the DBE program. A few recurring suggestions and/or recommendations provided by participants were:

1. Offer training on how to do business with DOT&PF, how to find the correct forms, how to fill out forms properly, etc.
2. Update forms and revise requirements on reporting.
3. Clarify language regarding scoring.
4. Encourage and provide classes for small DBEs on entering the marketplace.

7.10 CONCLUSIONS

Between the survey of vendors, public engagement input, focus groups, and in-depth interviews, MGT and its subconsultants received anecdotal data from 565 business owners or representatives that have done business with, or attempted to do business with, DOT&PF. In comparison, the Ninth Circuit Court of Appeals accepted anecdotal information from 57 interviewees in *Coral Construction*.

The state of Alaska has a small community of firms that do business with DOT&PF. Prime firms indicated that it was difficult to find qualified or certified DBEs. Both DBEs and non-DBEs want to receive more assistance from DOT&PF with education regarding program requirements, updated forms, and assistance with identifying DBEs.

CHAPTER 8. FINDINGS AND
RECOMMENDATIONS

Disadvantaged Business Enterprise Disparity Study

*Alaska Department of Transportation and Public
Facilities*



8.1 INTRODUCTION

In September 2019, MGT Consulting Group, LLC. (MGT), was retained to conduct a Disadvantaged Business Enterprise (DBE) Availability and Disparity Study for the Alaska Department of Transportation and Public Facilities (DOT&PF) to provide current data on the DOT&PF programs. In this chapter, MGT provides findings for the DOT&PF on minority, women, and disadvantaged business enterprise (M/W/DBE) utilization and availability.¹⁹⁸ This study consisted of fact-finding to analyze DOT&PF procurement trends and practices for the study period from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019); to evaluate the impact of race- and gender-neutral remedial efforts; and to evaluate various options for future program development.

CHAPTER SECTIONS	
8.1	Introduction
8.2	Findings
8.3	Commendations and Recommendations

The results of this study and conclusions drawn are presented in detail in **Chapters 3** through **7** of this report.

8.2 FINDINGS

FINDING A: M/W/DBE CONSTRUCTION UTILIZATION AND DISPARITY

The dollar value of M/W/DBE utilization on DOT&PF projects over the current study period from October 1, 2014 to September 30, 2019, within the relevant market was as follows:

- During the study period M/W/DBE firms awarded contracts totaled \$418.8 million, 17.68 percent of the total construction dollars; MBEs were awarded \$298.8 million in contracts, 12.61 percent of the total construction dollars (**Table ES-1**). There was disparity for African Americans in construction, as well as substantial disparity for American Indians/Alaska Natives and for Asian Pacific Islanders on DOT&PF projects.

TABLE ES-1.
SUMMARY OF CONSTRUCTION UTILIZATION BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION ALASKA DOT & PF
OCTOBER 1, 2014 THROUGH SEPTEMBER 30, 2019

BUSINESS OWNERSHIP CLASSIFICATION	FHWA (\$)	FAA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$206,978,136	\$91,888,174	\$0	\$298,866,310
Nonminority Women	\$110,204,184	\$9,813,303	\$0	\$120,017,487
Total M/W/DBE Firms	\$317,182,320	\$101,701,478	\$0	\$418,883,797
	(%)	(%)	(%)	(%)
Minority Business	11.40%	16.60%	0.00%	12.61%
Nonminority Women	6.07%	1.77%	0.00%	5.07%
Total M/W/DBE Firms	17.47%	18.37%	0.00%	17.68%

¹⁹⁸ M/W/DBEs includes minority- and women-owned firms that are certified DBEs and that are not certified DBEs.

- ◆ DBE certified construction firms were awarded contracts totaling \$163.7 million, 6.91 percent of the total construction dollars.

FINDING B: M/W/DBE PROFESSIONAL SERVICE UTILIZATION

- ◆ During the study period M/W/DBE firms awarded professional service contracts totaled \$24.0 million, 17.38 percent of the total professional services dollars; MBEs were awarded \$18.9 million in contracts, 13.70 percent of the total professional services dollars (**Table ES-2**). Certified DBE professional services contractors won 9.13 percent of the dollars awarded.

TABLE ES-2.
SUMMARY OF PROFESSIONAL SERVICES UTILIZATION BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION
ALASKA DOT & PF
OCTOBER 1, 2014 THROUGH SEPTEMBER 30, 2019

BUSINESS OWNERSHIP CLASSIFICATION	FHWA (\$)	FAA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$11,607,548	\$7,379,935	\$0	\$18,987,483
Nonminority Women	\$3,542,172	\$1,561,737	\$0	\$5,103,910
Total M/W/DBE Firms	\$15,149,721	\$8,941,672	\$0	\$24,091,393
	(%)	(%)	(%)	(%)
Minority Business	11.78%	18.43%	0.00%	13.70%
Nonminority Women	3.60%	3.90%	0.00%	3.68%
Total M/W/DBE Firms	15.38%	22.33%	0.00%	17.38%

FINDING C: NORTHERN REGION UTILIZATION

The findings differed somewhat when the data were examined on a regional basis. In the Northern Region in particular, there was a significant difference in M/W/DBE construction utilization. In that region M/W/DBEs were awarded 30.00 percent of construction dollars (**Table 8-3**).

TABLE 8-3.
UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS, SUBCONTRACTORS, AND SUBRECIPIENTS BY REGION BY BUSINESS OWNERSHIP CLASSIFICATION, FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION	NORTHERN REGION	SOUTHCOAST REGION
	Percent (%)	Percent (%)	Percent (%)
M/W/DBE Firms			
African Americans	0.08%	2.55%	0.00%
Alaska Native Corporation	4.26%	6.92%	0.41%
Alaska Tribal Corporation	0.00%	0.00%	0.00%
American Indians/Alaska Natives	0.97%	2.19%	3.57%
Asian Indian/Pacific Islanders	0.00%	0.00%	1.75%
Hispanic Americans	0.53%	14.78%	0.01%
Nonminority Women	6.10%	3.57%	4.81%

Total M/W/DBE Firms	11.93%	30.00%	10.55%
Non-M/W/DBE Firms	88.07%	70.00%	89.45%

FINDING D: NON-GOAL ANALYSIS

M/W/DBEs received 16.03 percent of the dollars awarded on projects with DBE goals compared to 18.11 percent of the dollars awarded on projects with no DBE goals. \$340.9 million dollars on projects with no DBE goals were awarded to M/W/DBE construction contractors, whereas \$78.0 million dollars were awarded to M/W/DBE contractors on projects with DBE goals (**Table 8-4**).

TABLE 8-4.
NON-GOAL ANALYSIS OF CONSTRUCTION UTILIZATION
BY BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FAA, AND FTA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)	Dollars (\$)	Percent (%)
M/W/DBE Firms						
African Americans	\$1,955,273.60	0.40%	\$18,887,191.94	1.00%	\$20,842,465.54	0.88%
American Indians/Alaska Natives	\$46,288,264.79	9.51%	\$61,434,571.27	3.26%	\$107,722,836.06	4.55%
Alaska Native Corporation	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
Alaska Tribal Corporation	\$8,946,878.75	1.84%	\$32,967,402.86	1.75%	\$41,914,281.61	1.77%
Asian Indian/Pacific Islanders	\$0.00	0.00%	\$6,407,355.50	0.34%	\$6,407,355.50	0.27%
Hispanic Americans	\$925,840.50	0.19%	\$121,053,531.10	6.43%	\$121,979,371.60	5.15%
Nonminority Women	\$19,904,253.51	4.09%	\$100,113,233.33	5.32%	\$120,017,486.84	5.07%
Total M/W/DBE Firms	\$78,020,511.15	16.03%	\$340,863,286.00	18.11%	\$418,883,797.15	17.68%
Non-M/W/DBE Firms	\$408,614,316.88	83.97%	\$1,541,520,934.36	81.89%	\$1,950,135,251.24	82.32%
TOTAL	\$486,634,828.03	100.00%	\$1,882,384,220.36	100.00%	\$2,369,019,048.39	100.00%

FINDING E: ANECDOTAL COMMENTS

Among the 201 M/W/DBEs who responded to survey questions about barriers to doing business, the biggest concern for M/W/DBE primes was competing with large firms (13.43% M/W/DBE primes). Similarly, the biggest concern for M/W/DBE subcontractors was also competing with large firms (25.84% of M/W/DBE subcontractors). Other key issues for M/W/DBE respondents participating in the survey are noted as follows. Detailed results for all respondents to questions are provided in **Appendix D-A: Survey of Vendors Results**.

PRIMES:

- ◆ Slow payment or non-payment for project work – 10.95%
- ◆ Financing – 6.47%
- ◆ Insurance requirements/general liability, professional liability, etc.– 6.47%
- ◆ Unnecessarily restrictive contract specifications – 6.47%

- ◆ Short or limited time given to prepare bid package or quote – 6.47%

SUBCONTRACTORS:

- ◆ Slow payment or nonpayment for project work – 11.24%
- ◆ Contract too large – 11.24%
- ◆ Informal network of primes and subcontractors excluding my company from doing business – 11.24%

8.3 COMMENDATIONS AND RECOMMENDATIONS

Most of the following commendations and recommendations are based on multiple findings and do not necessarily tie to one finding.

RECOMMENDATION A: PROPOSED DBE GOALS

MGT proposes the following annual DBE goals for DOT&PF by transportation mode for the upcoming period (**Table 8-5**):

TABLE 8-5.
 PROPOSED DBE GOALS, PAST DBE AND M/W/DBE OVERALL UTILIZATION,
 FFY2015-FFY2019 DBE GOALS
 FHWA, FAA, FTA

Mode	Proposed DBE Goal	DBE Utilization in Study Period	M/W/DBE Utilization in Study Period	Previous FFY 2012-14 Study DBE Goal
FHWA	10.49%	6.25%	17.36%	3.60%
FAA	10.56%	9.55%	18.64%	2.80%
FTA	10.51%	0.00%	0.00%	5.40%

The methodology for calculating these proposed goals is contained in **Appendix J**. The percentage of DBE and M/W/DBE utilization is calculated by dividing total spending with DBEs (construction and professional services) over total spending by each mode for the study period. In summary, no Step 2 adjustments are made to the DBE goals presented. However, the Alaska DOT&PF may decide to apply a Step 2 adjustments as needed if they believe they are warranted.

COMMENDATION AND RECOMMENDATION B: ASPIRATIONAL SUBCONTRACTOR PROJECT GOALS

DOT&PF should be commended for maintaining fairly strong M/W/DBE subcontractor utilization in the absence of DBE goals. Based on this level of non-goal M/W/DBE subcontractor participation, there continues to not be a strong factual predicate for across-the-board race- and gender-conscious DBE

subcontractor goals or setting a race-conscious component of the annual DBE goal. While a large percentage of M/W/DBE survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data indicated that there generally was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals.

DOT&PF should continue to consider the occasional use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. These project goals are called aspirational because DOT&PF would set the aspirational DBE project goals on projects in a similar fashion as current DBE goals, with one difference: bids are not rejected for failure to meet the DBE project goal, or for failure to submit good faith efforts documentation.

COMMENDATION AND RECOMMENDATION C: DBE POLICY

DOT&PF should be commended for its DBE outreach efforts in each region. The extent to which DOT & PF engage with DBEs individually and collaboration with local business development organizations has resulted in building networks and working relationships that enhance and improve DBE utilization.

DOT&PF should also be commended for its rules promoting the solicitation of certified DBEs for small PSAs with FHWA or FAA funding. DOT&PF can also employ aspirational DBE project goals for PSAs to encourage more subcontracting on PSA contracts.

COMMENDATION AND RECOMMENDATION D: OUTREACH

The DOT&PF should be commended for its current outreach efforts to reach all potential vendors through social media, email, and traditional media avenues. The DOT&PF must continue to continuously encourage participation of all DBEs in all procurement and contracting. Encouraging participation in this context is based upon establishing ongoing one-on-one relationships with vendors and serving as coach/mentor to help identify procurement and contracting opportunities, help navigate the purchasing process, and build relationships with DOT&PF staff. Interacting and communicating with other departments and internal end users by providing assistance, advice, and support related to ensure equal access to procurement opportunities is key to increasing utilization.

COMMENDATION AND RECOMMENDATION E: DATA MANAGEMENT

DOT&PF should be commended for using the BizTrak system to maintain data on contracting and PSAs at the prime contractor/consultant and subcontractor/subconsultant levels by race, ethnicity, and gender classification. However, it is imperative that a mechanism is developed so that all data (including data maintained by the regional offices) are tracked and maintained in a centralized system. This centralized system could have several modules, such as contract management, certification management, and vendor management. The contract management module would track all contracting and PSA data including awards and payments made to prime contractors/consultants and subcontractor/subconsultants. The vendor management module would not be limited to only firms that do business with DOT&PF, but also firms that submit bids and/or responses to RFPs to do business with DOT&PF, as well as subcontractors/subconsultants.

The certification management module could provide assistance in tracking DBE certification. This system would assist DOT&PF to track and maintain more comprehensive and consistent data.

RECOMMENDATION F: CONTRACT SIZE

Numerous vendors felt that the size of DOT&PF construction contracts were too large for them to be able to bid on. When possible, the DOT&PF should consider breaking contracts into smaller components to allow small business to adequately bid.

RECOMMENDATION G: TECHNICAL ASSISTANCE, CAPACITY BUILDING AND ACCESS TO CAPITAL

The DOT&PF should establish and enhance programs that provide technical assistance, capacity building, and access to capital support. The DOT&PF can partner directly with local trade associations, business organizations and corporations on professional development programs and workshops for DBE and contribute to their long-term development of capacity. This would not only increase the awareness of the DBE program but also increase the utilization of DBE firms and their overall competitiveness in the marketplace.

The DOT&PF should remain active in promoting the growth of DBEs through trainings, access to services, relationships, and other means of supporting their market expansion.