

**Disadvantaged Business Enterprise (DBE) Program  
Proposed Final Three-Year Overall  
DBE Goal & Methodology for Federal Fiscal Years  
2015 through 2017**

June 8, 2015

Submitted to

**FEDERAL HIGHWAY ADMINISTRATION  
United States Department of Transportation**



**ADOT**

Arizona Department of Transportation  
Business Engagement and Compliance Office

# **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED REVISED FINAL THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION FOR FEDERAL FISCAL YEARS 2015 THROUGH 2017**

## **Introduction**

The Arizona Department of Transportation (ADOT) hereby submits its final three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2015 through 2017 to the Federal Highway Administration (FHWA) pursuant to [49 CFR Part 26, section 26.45](#).

Utilizing the two-step goal-setting methodology outlined in 49 CFR Part 26, section 26.45, the United States Department of Transportation's (USDOT) Tips for Goal-Setting, and other USDOT official guidance, ADOT submitted a preliminary three-year goal in the summer of 2014 based on data from an Availability Study that was part of an ongoing Availability and Disparity Study. ADOT commissioned Keen Independent Research LLC (Keen Independent) in February 2014 to conduct an Availability and Disparity Study related to its implementation of the Federal DBE Program. In the summer of 2014, ADOT submitted a preliminary overall DBE goal for FFYs 2015 - 2017 of 9.38%; 3.94% of which was projected to be accomplished through race- and gender-conscious means (contract goals) and 5.44% which was expected to be accomplished through race-neutral means (ADOT outreach, training, and program efforts). This preliminary goal was based on data from the completed 2014 Availability Analysis portion of the Disparity Study that was still in process at the time. ADOT indicated in its preliminary goal submission to FHWA that a more refined goal may be resubmitted when the full Disparity Study was completed in the summer of 2015. This preliminary DBE goal was approved by FHWA in March 2015 pending resubmission at the conclusion of the full Disparity Study.

The full Disparity Study is now completed (submitted with this document as supporting information) and based on the results of the study, ADOT has refined and is submitting its final DBE goal for FFYs 2015 - 2017 of 8.90% to FHWA for reconsideration; 3.90% of which is projected to be accomplished through race- and gender-conscious means (contract goals) and 5.00% which is expected to be accomplished through race-neutral means (ADOT outreach, training, and program efforts). The Disparity Study analyzed whether there is a disparity between the utilization and availability of women- and minority-owned businesses on ADOT contracts and more comprehensively examined local marketplace conditions. ADOT sought public comment on the preliminary DBE goal last summer and will seek additional public input on the final proposed goal during the summer of 2015.

## **Step 1. Determining a Base Figure – Pursuant to 49 CFR Section 26.45(c)**

ADOT began the process of determining its overall DBE goal by establishing a base figure. Consistent with USDOT regulations and guidance, ADOT established a base figure from a DBE availability analysis conducted by Keen Independent as part of the ongoing 2015 Disparity Study.

Based on this information and similar data for all contracts, regardless of funding source, Keen Independent determined that Arizona should be selected as the relevant geographic market area for the availability study. About 95% of ADOT and local agency FHWA-funded contract dollars from July 2007 - June 2013 went to firms with locations in Arizona. Therefore, the availability analysis examined firms with locations in Arizona.

Keen Independent analyzed the availability of minority- and women-owned businesses to participate in FHWA-funded transportation contracts — both prime contracts and subcontracts — that ADOT and its Subrecipients awarded in FYs 2007 - 2013 in Arizona.

A “custom census” approach as described below was used to estimate the availability of MBEs/WBEs and majority-owned businesses for 11,397 FHWA-funded construction and engineering prime contracts and subcontracts that ADOT and local agencies awarded for State FYs 2007 - 2013.

### Head Count Availability

Availability is expressed as the percentage of the associated contracting dollars that one might expect minority- and women-owned businesses to receive based on various factors including the type of work involved, the location of the work, and the size of the contract or subcontract. In the base figure analysis, firms considered were only those minority- and women-owned businesses that are DBE-certified or appear that they could be DBE-certified based on requirements described in federal regulations including 49 CFR Section 26.65 (referred to herein as potential DBEs; see 76 Federal Register 5092 (January 28, 2011)).

Figure 1 presents the number of businesses included in the availability database for each racial, ethnic and gender group. The Disparity Study identified 1,429 businesses reporting that they were available for specific types, sizes and locations of ADOT and local agency transportation-related prime contracts and subcontracts. Of those businesses 500 (about 35%) were MBEs or WBEs. (This analysis expands on what was included in the 2014 Availability Study, which examined 1,072 companies available for ADOT work.)

**Figure 1. Availability “Head Count” of Businesses Included in Availability Study**

| Race/ethnicity and gender         | Number of firms | Percent of firms |
|-----------------------------------|-----------------|------------------|
| African American-owned            | 26              | 1.8 %            |
| Asian-Pacific American-owned      | 19              | 1.3              |
| Subcontinent Asian American-owned | 18              | 1.3              |
| Hispanic American-owned           | 189             | 13.2             |
| Native American-owned             | 37              | 2.6              |
| Total MBE                         | 289             | 20.2 %           |
| WBE (white women-owned)           | 211             | 14.8             |
| Total MBE/WBE                     | 500             | 35.0 %           |
| Total majority-owned firms        | 929             | 65.0             |
| Total firms                       | 1,429           | 100.0 %          |

Note: Numbers rounded to nearest tenth of 1 percent.

Source: Keen Independent 2015 DBE Availability and Disparity Study

### Dollar-Weighted Availability

A “custom census” approach was used in calculating MBE/WBE availability for ADOT and local government agency federal highway work rather than using a simple “head count” approach. (The “head count” approach is simply calculating the percentage of all Arizona transportation contracting businesses that are minority- or women-owned businesses.)

The “head count” data was further analyzed to produce “dollar-weighted” availability estimates, which represent the percentage of ADOT transportation contracting dollars that MBEs/WBEs might be expected to receive based on their availability for specific types, sizes and locations of ADOT transportation-related construction and engineering prime contracts and subcontracts. This approach to calculating availability was a bottom-up, contract-by-contract process of “matching” available firms to specific prime contracts and subcontracts based on the types, sizes and locations of work they do. In other words, Keen Independent performed an availability analysis for each of the 11,348 FHWA-funded prime contracts and subcontracts during the study period, and then summarized results.



Using this “custom census” approach typically results in lower availability estimates for MBEs and WBEs than a “head count” approach in part due to the consideration of “bid capacity” in measuring availability and because of dollar-weighting availability results for each contract element (i.e., a large prime contract has a greater weight in calculating overall availability than a small contract or subcontract). The largest contracts that MBEs/WBEs have bid on or performed in Arizona tend to be smaller than those of other businesses. Therefore, MBEs/WBEs are less likely to be identified as available for the largest prime contracts and subcontracts.

The “custom census” approach used in calculating the “dollar-weighted” availability is much more precise than a simple “head count” of businesses because it considers the following factors:

1. Type of Work. USDOT suggests calculating availability based on businesses’ abilities to perform specific types of work and gives the following example in Part II F of “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”:

*For instance, if 90 percent of your contract dollars will be spent on heavy construction and 10 percent on trucking, you should weight your calculation of the relative availability of firms by the same percentages.<sup>1</sup>*

The type of work was taken into account by examining 40 different sub-industries related to construction and engineering as part of estimating availability for ADOT and local agency work.<sup>2</sup>

2. Qualifications and Interest in Transportation-Related Prime Contract and Subcontract Work. Information was collected on whether businesses are qualified and interested in working as prime contractors, subcontractors, or both on ADOT and local agency transportation work, in addition to the consideration of several other factors related to prime contracts and subcontracts (e.g., contract types, sizes and locations):
  - Only businesses that reported being qualified for and interested in working as prime contractors were counted as available for prime contracts (or included because contract data for ADOT or local agencies indicated that they had prime contracts in the past seven years).
  - Only businesses that reported being qualified for and interested in working as subcontractors were counted as available for subcontracts (or included because contract data for ADOT or local agencies indicated that they had subcontracts in the past seven years).
  - Businesses that reported being qualified for and interested in working as both prime contractors and subcontractors were counted as available for both prime contracts and subcontracts.
3. Size of Prime Contracts and Subcontracts. Also considered was the size - in terms of dollar value - of the prime contracts and subcontracts that a business bid on or received in the previous seven years (i.e., “bid capacity”) when determining whether to count that business as available for a specific prime contract or subcontract. When counting available businesses for a particular prime contract or subcontract, the availability analysis considered whether businesses had previously bid on or received at least one contract of an equivalent or greater dollar value in Arizona in the previous seven years,

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<sup>1</sup> USDOT. *Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program* as updated June 25, 2013

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

<sup>2</sup> The sub-industries considered were (in descending order of dollars): general road construction and widening; asphalt paving; pavement surface treatment; design engineering; bridge work; guardrail, signs or fencing; trucking and hauling; steel work; structural concrete work; concrete flatwork; temporary traffic control; electrical work including lighting and signals; landscaping and related work; excavation, grading and drainage; Portland cement concrete paving; drilling and foundations; soils and materials testing; concrete cutting; surveying and mapping; underground utilities; striping or pavement marking; milling; transportation planning; environmental consulting; construction management; erosion control; painting for road or bridge projects; wrecking and demolition; concrete pumping; asphalt, concrete or other paving materials; petroleum; and fence, guardrail materials. Sub-industries also included other construction-related; other engineering-related; other materials; and other services.

based on the most inclusive information from survey results and analysis of past ADOT and local agency prime contracts and subcontracts.

This approach is consistent with many recent, key court decisions that have found relative capacity measures to be important to measuring availability (e.g., *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*; <sup>3</sup> *Western States Paving Company v. Washington State DOT*; <sup>4</sup> *Rothe Development Corp. v. U.S. Department of Defense*; <sup>5</sup> and *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*<sup>6</sup>).

4. Geographic Location of the Work. This was determined by using the location where work was performed for ADOT and local agency contracts (Northern, Central or Southern Arizona). Only firms reporting that they were able to work in a region were counted as available for contracts in that region.
5. Dollar-Weighted Results. Relative availability was determined on a contract-by-contract basis and then dollar-weighted to determine overall DBE availability for FHWA-funded contracts. For each prime contract and subcontract, Keen Independent calculated (a) the number of DBEs available for that type, size and location of work, (b) the total number of firms available for that work, and (c) the percentage DBE availability for that prime contract or subcontract, calculated by dividing (a) by (b). The factor used to dollar-weight the availability results for each of the 11,348 prime contracts and subcontracts was calculated by dividing the dollars for that prime contract/subcontract by \$3,672,259,000 (the total FHWA-funded contract dollars examined). Small prime contracts or subcontracts received small weights and the largest contracts received the highest weights. For example, availability results for a \$37 million prime contract would receive a weight of 1% ( $\$37,000,000 \div \$3,672,259,000$  billion = 1.0%). Thus, the results of relatively large contract elements contributed more to overall availability estimates than those of relatively small contract elements. Once weighted, the DBE availability percentage results for each prime contract and subcontract were added to develop the overall availability figure. This approach is consistent with USDOT's "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program," which suggests a dollar-weighted approach to calculating availability.

Figure 2 below provides an example of the contract-by-contract dollar-weighted availability calculation that was conducted on each prime and subcontract during the study period.

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<sup>3</sup> *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187, 2013 WL 1607239 (9<sup>th</sup> Cir. April 16, 2013).

<sup>4</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

<sup>5</sup> *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

<sup>6</sup> *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996).

**Figure 2. Example of an Availability Calculation**

One of the subcontracts Keen Independent examined was for landscaping (\$10,500) on a 2013 Federal Highway Administration-funded contract for a local agency in Central Arizona. To determine the number of MBEs/WBEs and majority-owned firms available for that subcontract, Keen Independent identified businesses in the availability database that:

- a. Were in business in 2013;
- b. Indicated that they performed landscaping on transportation-related projects;
- c. Reported working or bidding on subcontracts in Arizona in the past seven years;
- d. Reported bidding on work of similar or greater size in the past seven years;
- e. Reported ability to perform work in Central Arizona; and
- f. Reported qualifications and interest in working as a subcontractor on local government transportation projects.

There were 144 businesses in the availability database that met those criteria. Of those businesses, 62 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 43 percent ( $62/144 = 43.1\%$ ).

The availability results received a weight of  $\$10,000 \div \$3,672,259,000$  or 0.00027%. (Weights are applied by multiplying the availability result for a prime contract or subcontract by the weight, and then adding results for all prime contracts and subcontracts.)

Source: Keen Independent Availability Analysis from 2014 Availability Study

Keen Independent used the custom census approach described above to estimate the availability of MBE/WBEs and majority-owned businesses for FHWA-funded prime contracts and subcontracts that ADOT and local agencies awarded during the study period. Figure 3 below presents overall dollar-weighted availability estimates by MBE/WBE group for those contracts. Overall, MBE/WBE availability for FHWA-funded contracts is 14.53 percent (about 2 percentage points less than reported in the 2014 Availability Study because of refinement of contract information and data on available firms). This result is lower than the percentage of availability firms that are MBE/WBE (35%) in Figure 1. Dollar-weighted availability was highest for Hispanic American-owned businesses (5.24%), white women-owned firms (4.95%) and Native American-owned companies (1.98%). Availability was 1.04 percent for African American-owned businesses and less than 1 percent for Subcontinent Asian American-owned firms (0.97%) and Asian-Pacific American-owned companies (0.36%).

**Figure 3. Overall Dollar-Weighted Availability Estimates by MBEs/WBEs for FHWA-Funded Contracts, July 2007-June 2013**

| Race/ethnicity and gender         |             |
|-----------------------------------|-------------|
| African American-owned            | 1.04 %      |
| Asian-Pacific American-owned      | 0.36        |
| Subcontinent Asian American-owned | 0.97        |
| Hispanic American-owned           | 5.24        |
| Native American-owned             | <u>1.98</u> |
| Total MBE                         | 9.59 %      |
| WBE (white women-owned)           | <u>4.95</u> |
| Total MBE/WBE                     | 14.53 %     |

Source: Keen Independent 2015 DBE Availability and Disparity Study

## Calculation of Final Base Figure for ADOT's Overall DBE Goal

The calculation of the final base figure focused on potential DBEs (including currently certified DBEs) which is consistent with:

1. Court-reviewed methodologies in several states, including California;
2. Instructions in The Final Rule effective November 3, 2014 that outline revisions to the Federal DBE Program; and
3. USDOT's "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program."

Keen Independent's availability analysis indicates that the availability of minority- and women-owned firms for ADOT's FHWA-funded transportation contracts is 14.53 percent based on current availability information and analysis of FHWA-funded ADOT and local agency contracts awarded from July 2007 through June 2013. This is 2 percentage points lower than reported in the 2014 Availability Study due to refinement of contract and availability data as well as collection of availability data for three additional sub-industries in the 2015 Disparity Study.

**Calculations to Convert MBE/WBE Availability to Availability of Current and Potential DBEs.** Figure 4 provides the calculations to derive current/potential DBE availability when starting from MBE/WBE availability figures. For FHWA-funded contracts, there were three groups of MBE/WBEs that Keen Independent did not count as potential DBEs when calculating the base figure, and one DBE group that added to the base figure:

- MBE/WBEs that in recent years graduated from the DBE Program or had applied for DBE certification in Arizona and had been denied (based on information supplied by ADOT, City of Phoenix and City of Tucson);
- MBE/WBEs in the availability interviews reported having annual revenue over the most recent three years that exceeded the three-year average annual revenue limits for DBE certification for their sub-industry; and
- MBE/WBEs that upon telephone and email follow-up by ADOT indicated that they would not qualify for DBE certification or were not interested in certification.<sup>7</sup>

Removing these three categories of MBE/WBEs reduced the base figure for FHWA-funded contracts by 6.73 percentage points.

Keen Independent identified one white male-owned firm certified as a DBE in the availability analysis. Inclusion of this firm added 1.10 percentage points to the total availability for current and potential DBEs. After subtracting 6.73 percentage points for the first refinement and adding 1.10 percentage points for the second refinement, dollar-weighted availability for current and potential DBEs was 8.90 percent (5.63 percentage points lower than MBE/WBE availability). Figure 4 shows these calculations to determine the base figure for FHWA-funded contracts.

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<sup>7</sup> Research conducted by Donato Consulting for ADOT from a Keen Independent list of potential DBE identified in the 2014 Availability Study (Donato results as of March 31, 2015).

**Figure 4. Overall Dollar-Weighted Availability Estimates for Current and Potential DBEs for FHWA-Funded Contracts, July 2007-June 2013**

| Calculation of base figure                                                                                                                                                    | FHWA        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Total MBE/WBE                                                                                                                                                                 | 14.53 %     |
| Less firms that graduated from the DBE Program<br>or denied DBE certification in recent years<br>or exceed revenue thresholds<br>or report that do not qualify/not interested | <u>6.73</u> |
| Subtotal                                                                                                                                                                      | 7.80 %      |
| Plus white male-owned DBEs                                                                                                                                                    | <u>1.10</u> |
| Current and potential DBEs                                                                                                                                                    | 8.90 %      |

Source: Keen Independent 2015 Availability and Disparity Study

**Consideration of Planned Projects for FY 2015 - FY 2017.** ADOT's 2015-2019 Five-Year Construction Facilities Construction Program (ADOT Five-Year Plan) indicates that ADOT highway spending will include a mix of expansion, modernization and preservation projects in state FY 2015 and FY 2016. Compared with ADOT's current program, by FY 2017, funding for all types of projects is expected to decline particularly for expansion and modernization projects. Because of this change in project mix, there will be fewer expansion projects during the state FY 2015 - FY 2017 time period compared with previous years, resulting in more limited subcontracting opportunities. However, during this time period there are plans to design and build a \$1.7 billion project, ADOT's largest single project, through a Public-Private Partnership Design-Build-Maintain alternative delivery contract.

The geographic mix of work is anticipated to change as well, with relatively more work in Central Arizona and less work in Southern Arizona.

Any changes in the project mix could affect the base figure analysis:

- The availability analysis did not identify any current or potential DBEs available for the largest ADOT construction or engineering contracts (e.g., 0% DBE availability for those prime contracts). The base figure would be higher if there were relatively fewer large FHWA-funded prime contracts in the future.
- Conversely, the base figure would be lower if the relative amount of work going to subcontractors on FHWA-funded contracts decreased in the next three fiscal years. Overall, DBE availability is higher for subcontracts than prime contracts.
- Any shift in the relative amount of engineering work could affect the base figure.
- Geographic shifts in work away from Southern Arizona could lower the overall DBE availability estimates.

Keen Independent considered these factors and preliminarily concluded that they may offset one another. Therefore, it is not clear if change in project mix would affect the base figure.



## **Final Step 1 Determination Based on Required Factors**

Many of the factors described above suggest that the base figure would be higher given the changes in project mix in the next three fiscal years, while other factors indicate that the base figure would be lower. Some factors, including the amount of future subcontracting, are not readily quantifiable. In summary, Keen Independent's analysis of future projects identified somewhat offsetting effects on the base figure. Therefore, ADOT chose to consider 8.90% as its base figure. This refines the preliminary estimate of 14.61 percent in the 2014 Availability Study and presented in ADOT's summer 2014 preliminary three-year overall DBE goal methodology submission.

## **Step 2. Determining if an Adjustment is Needed – 49 CFR Section 26.45(d)**

After establishing the base figure, ADOT considered information from the newly completed Disparity Study to determine whether any step 2 adjustment was needed to the base figure to determine the overall DBE goal. The information from the Disparity Study summarized below provided updated results that ADOT considered if it were to refine its overall DBE goal for FFY 2015 through FFY 2017 for FHWA-funded contracts. In considering an adjustment to the base figure, ADOT evaluated factors that the Federal DBE Program indicates that an agency must consider when assessing whether to make any Step 2 adjustment to the base figure. These factors include:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding and insurance; and
- Other relevant factors.<sup>8</sup>

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but was still relevant to ADOT as it determined whether to make any step 2 adjustments.

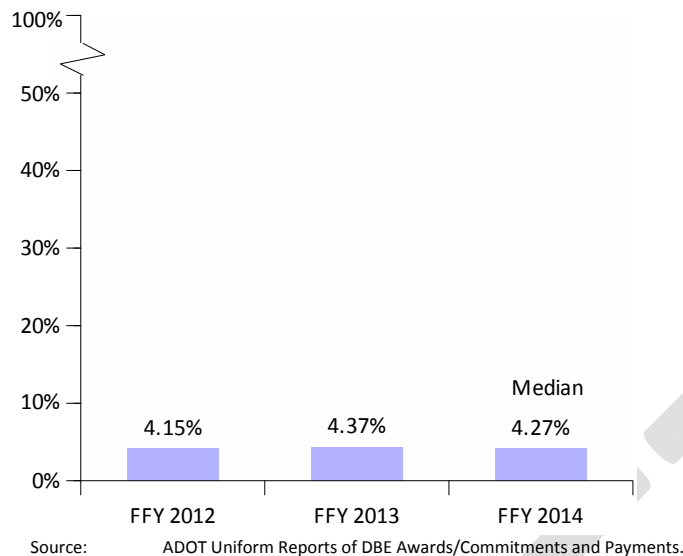
**1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs have Performed in Recent Years.** USDOT's "Tips for Goal-Setting" suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

**DBE Participation Based on ADOT Uniform Reports to FHWA.** Figure 5 presents updated information about past DBE participation based on payments from ADOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA. Participation is shown for FFYs 2012, 2013 and 2014, the three most recent complete federal fiscal years at the time of the Disparity Study (FFY 2014 results had not been compiled at the time of the 2014 Availability Study). ADOT reports that, for purposes of indicating current capacity of DBEs, the payments information for this three-year period may be more reliable than its Commitments and Awards data.

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<sup>8</sup> 49 CFR Section 26.45.

**Figure 5. ADOT reported past DBE participation on FHWA-funded contracts based on payments, federal fiscal years 2012, 2013 and 2014**



After having discontinued setting DBE contract goals in 2006, ADOT reinstated DBE contract goals for FHWA-funded contracts in FFY 2011. Median DBE participation for FHWA-funded contracts for FFY 2012 through FFY 2014 was 4.27 percent based on ADOT's reports (based on payments). At the time of the 2015 Disparity Study, the most recent full federal fiscal year for which ADOT had reported data was FFY 2014 (ending September 2014). The median DBE participation (based on payments) for FHWA-funded contracts for the last three full fiscal years, 4.27 percent, indicates that ADOT could make a downward step 2 adjustment based on this factor, as explained later in this document.

**DBE Participation Based on Keen Independent Utilization Analysis for FHWA- and State-Funded Contracts.** Keen Independent's analysis identified 8.18 percent participation of DBEs on FHWA- and state-funded contracts from July 2011 through June 2013. ADOT might consider this data when determining whether to make a downward step 2 adjustment based on past DBE participation. (Keen Independent captured more information on FHWA-funded contracts and DBE participation than ADOT was able to include in the Uniform Reports.)

Note that the 8.18 percent DBE participation estimate and the 8.90 percent base figure are very close. If ADOT were to use the Keen Independent results for its estimate of DBE participation, it would not need to make a downward step 2 adjustment.<sup>9</sup>

**2. Information Related to Employment, Self-Employment, Education, Training, and Unions.** Keen Independent analyzed information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs as part of the Disparity Study. The analyses indicates that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Arizona construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ADOT and local agency transportation contracts.

<sup>9</sup> Note that "Tips for Goal-Setting" considers the possibility that the base figure and the goal based on a step-2 adjustment might be very close. "If your records suggest levels of past participation very similar to the number you calculated in Step One, then it is not necessary to make any adjustment for past participation." The example USDOT provides for "very similar" is when the base figure and the calculation after the step-2 adjustment are within 1.4 percentage points of one another. "In that case, you do not need to make an adjustment for past participation. Nevertheless, you must explicitly state that the reason you are not making an adjustment for past participation is that your past participation has been very similar to your Step One Base Figure." (See III.A.2. of USDOT, "Tips for Goal Setting.")

It may not be possible to quantify the cumulative effect that barriers in employment, education, and training may have had in depressing the availability of minority- and women-owned firms in the Arizona transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained below.

Regression analyses were used to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Arizona construction and engineering industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the Disparity Study provides detailed results of the business ownership regression analyses).<sup>10</sup> Those analyses revealed that African Americans, Native Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various gender-neutral personal characteristics. Each of these disparities was statistically significant.

Also analyzed was the impact that barriers in business ownership would have on the base figure if African Americans, Native Americans and white women owned businesses at the same rate as similarly-situated non-minorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs but for the effects of race- and gender-based discrimination.

Figure 6 calculates the impact on overall MBE/WBE availability, resulting in possible upward adjustment of the base figure to 12.61 percent. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded construction and engineering prime contracts and subcontracts that ADOT and local agencies awarded from July 2007 through June 2013). Calculations are explained below.

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<sup>10</sup> The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

**Figure 6. Potential Step 2 Adjustment Considering Disparities in the Rates of Business Ownership**

| Subindustry and group                       | a.<br>Current<br>availability | b.<br>Disparity index<br>for business<br>ownership | c.<br>Availability<br>after initial<br>adjustment* | d.<br>Availability<br>after scaling<br>to 100% | e.<br>Components of<br>overall MBE/WBE<br>availability** |
|---------------------------------------------|-------------------------------|----------------------------------------------------|----------------------------------------------------|------------------------------------------------|----------------------------------------------------------|
| <b>Construction</b>                         |                               |                                                    |                                                    |                                                |                                                          |
| African American                            | 1.02 %                        | 77                                                 | 1.32 %                                             | 1.26 %                                         |                                                          |
| Native American                             | 1.83                          | 33                                                 | 5.55                                               | 5.28                                           |                                                          |
| Other minorities                            | 6.30                          | n/a                                                | 6.30                                               | 6.00                                           |                                                          |
| White women                                 | 4.83                          | 84                                                 | 5.75                                               | 5.48                                           |                                                          |
| MBE/WBEs                                    | 13.98 %                       | n/a                                                | 18.92 %                                            | 18.03 %                                        | 16.59 %                                                  |
| Majority-owned businesses                   | 86.02                         | n/a                                                | 86.02                                              | 81.97                                          |                                                          |
| <b>Total firms</b>                          | <b>100.00 %</b>               | <b>n/a</b>                                         | <b>104.94 %</b>                                    | <b>100.00 %</b>                                |                                                          |
| <b>Engineering and other subindustries</b>  |                               |                                                    |                                                    |                                                |                                                          |
| MBE/WBEs                                    | 20.71 %                       | n/a                                                | 20.71 %                                            | 20.71 %                                        | 1.66 %                                                   |
| Majority-owned businesses                   | 79.29                         | n/a                                                | 79.29                                              | 79.29                                          |                                                          |
| <b>Total firms</b>                          | <b>100.00 %</b>               | <b>n/a</b>                                         | <b>100.00 %</b>                                    | <b>100.00 %</b>                                |                                                          |
| <b>Total for MBE/WBEs</b>                   | <b>14.53 %</b>                | <b>n/a</b>                                         | <b>n/a</b>                                         |                                                | <b>18.24 %</b>                                           |
| <b>Difference from current availability</b> |                               |                                                    |                                                    |                                                | <b>3.71 %</b>                                            |

Note: Numbers may not add to 100.00% due to rounding.

\* Initial adjustment is calculated as current availability divided by the disparity index for business ownership.

\*\* Components of the base figure were calculated as the value after adjustment and scaling to 100 percent, multiplied by the percentage of total FHWA-funded contract dollars in each industry (construction = 92%, engineering = 8%).

Source: Keen Independent based on FHWA-funded contracts for July 2007 through June 2013, 2014 availability analysis, and statistical analysis of U.S. Census Bureau American Community Survey data for Arizona for 2008-2012.

The “but for” analyses were completed separately for construction and engineering contracts and then results were based on the proportion of FHWA-funded contract dollars that ADOT awarded for construction and engineering for July 2007 - June 2013 (i.e., 92% weight for construction and 8% weight for engineering). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses:

1. **Current Availability.** Column (a) presents the current availability of MBE/WBEs by group for construction and for engineering and other sub-industries. Each row presents the percentage availability for MBEs and WBEs. The current combined availability of MBE/WBEs for ADOT FHWA-funded transportation contracts for July 2007-June 2013 is 14.53 percent, as shown in bottom row of column (a).
2. **Disparity Indices for Business Ownership.** As presented in Appendix F, African Americans, Native Americans and white women were significantly less likely to own construction firms than similarly-situated non-minorities and white men.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), white women own construction businesses at 84 percent of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F explains how the study team calculated the disparity indices.

3. **Availability After Initial Adjustment.** Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
4. **Availability After Scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100 percent for each industry. The study team re-scaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total firms" in column (c) - and multiplying by 100. For example, the re-scaled availability estimate for white women shown for construction was calculated in the following way:  $(4\% \div 104.94\%) \times 100 = 5.48\%$ .
5. **Components of Overall DBE Goal with Upward Adjustment.** Column (e) of Figure 6 shows the component of the total base figure attributed to the adjusted MBE and WBE availability for construction versus engineering and other sub-industries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and for engineering/other — and multiplying it by the proportion of total FHWA-funded contract dollars in each industry (i.e., 92% for construction and 8% for engineering). For example, the study team used the 18.03 percent shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 92 percent for a result of 16.59 percent. A similar weighting of MBE/WBE availability for engineering/other produced a value of 1.66 percent.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 18.24 percent as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the "but for" MBE/WBE availability (18.24%) and the current availability (14.53%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 3.71 percentage points  $(18.24\% - 14.53\% = 3.71\%)$ .

Therefore, based on information related to business ownership, ADOT could have considered an upward adjustment to its overall DBE goal of up to 3.71 percentage points. This goal would be 12.61 percent as the 3.71 percentage point adjustment would be from a base figure of 8.90 percent calculated after subtracting availability for MBE/WBEs that are not potential DBEs and adding white male-owned DBEs  $(8.90\% + 3.71\% = 12.61\%)$ .

**3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance.** The 2015 DBE Availability and Disparity Study's analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBEs/WBEs. This is significant because:

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Arizona marketplace.
- Any barriers that MBEs/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ADOT and local agency construction and engineering prime contracts and subcontracts.

Bonding and financing are clearly linked plus there is also evidence that some firms cannot bid on certain public sector projects because they cannot obtain the level of bonding or afford the levels of insurance required by the agency. These barriers appear to affect small businesses, which might disproportionately impact minority- and women-owned firms.



The information about financing, bonding and insurance could support an upward step 2 adjustment in ADOT's overall annual goal for DBE participation in FHWA-funded contracts.

**4. Other Factors.** The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.<sup>11</sup>

**Success in the Arizona marketplace.** Among the “other factors” examined in the Disparity Study was the success of MBE/WBEs relative to majority-owned businesses in the Arizona marketplace. The study found quantitative and supportive qualitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. There is also qualitative evidence of barriers to the success of minority- and women-owned businesses. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Arizona transportation contracting industry.

**Approaches for Making Step 2 Adjustments.** Other quantification for making step 2 adjustments is discussed below.

**1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs have Performed in Recent Years.** Analysis of this factor might indicate a downward step 2 adjustment if ADOT analyzed its estimates of past DBE participation (based on payments) - for recent years, the median reported DBE participation on FHWA-funded contracts was 4.27 percent (from Figure 8-1).

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 8.90 percent base figure (calculated in Chapter 5) and 4.27 percent DBE participation is 4.63 percentage points ( $8.90\% - 4.27\% = 4.63\%$ ). One-half of this difference is a downward adjustment of 2.32 percentage points ( $4.63\% \div 2 = 2.32\%$ ). The goal would then be calculated as follows:  $8.90\% - 2.32\% = 6.58\%$ .

**2. Information Related to Employment, Self-Employment, Education, Training, and Unions.** The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 3.71 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 6. If ADOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 12.61 percent ( $8.90\% + 3.71\% = 12.61\%$ ).

**3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance.** Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

**4. Other Factors.** Impact of the many barriers to success of MBE/WBEs in Arizona could not be specifically quantified. However, the evidence supports an upward adjustment.

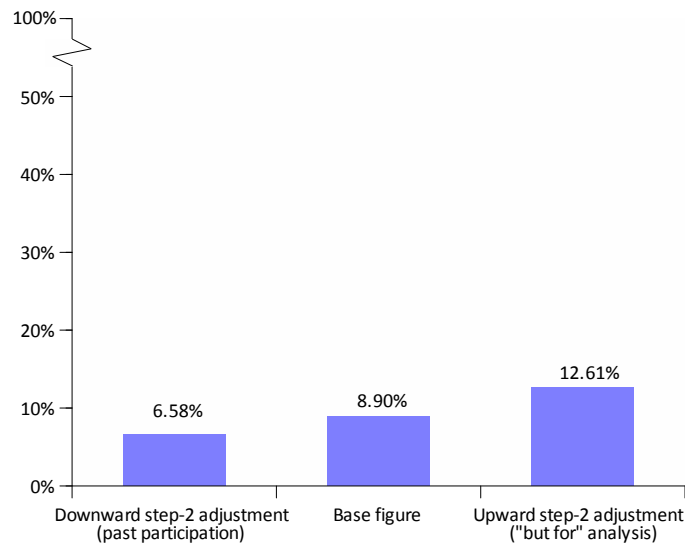
**Summary.** ADOT considered whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal. If ADOT made a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts would be 6.58 percent. If ADOT decided to not make a downward adjustment and to make an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 12.61 percent. Figure 7 summarizes this information.

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<sup>11</sup> 49 CFR Section 26.45.

Note that the downward step 2 adjustment in Figure 7 is based on median DBE participation for recent years (based on payments) from ADOT's Uniform Reports. If ADOT instead evaluated the 8.18 percent DBE participation in the July 2010 through June 2013 time period for FHWA- and state-funded contracts, USDOT guidelines indicate that ADOT would not consider a downward adjustment.

**Figure 7. Potential Step 2 Adjustments to Overall DBE Goal for FHWA-Funded Contracts**



**Final Step 2 Adjustment Resulting in Proposed Preliminary DBE Goal.** ADOT has considered the available information and has decided to use its base-figure of 8.90% as its final overall DBE goal for FFY 2015-2017 for FHWA-funded contracts, and make no upward or downward step 2 adjustment.

ADOT chose to use the base figure of 8.90% for a number of reasons including:

- The 8.90 percent goal better reflects the current capacity of certified DBEs to perform work.
- The 8.90 percent goal represents an increase over ADOT's 7.76 percent DBE goal through FFY 2014, which ADOT did not fully achieve.
- Proposed 8.90 percent goal will require substantial new efforts to achieve.
- For many years, ADOT DBE utilization has been considerably less than 8.90 percent.
- When past DBE participation is based on Disparity Study results (8.18%), it is very close to the base figure of 8.90 percent.
- Achievement of this 8.90 percent goal is contingent upon potential DBEs obtaining certification, which could take several years to achieve assuming that these firms are willing to become certified and can meet the "DBE Certification" requirements.
- ADOT did not choose to make an upward adjustment of 12.61% as it is considerably higher than the current capacity of existing and potential newly-certified DBEs to perform work on ADOT FHWA-funded contracts and would be difficult to achieve based on the reasons stated above.

## Race-/Gender-Neutral and Race/Gender-Conscious Split – 49 CFR Section 26.51 (c)

In accordance with federal regulations and USDOT guidance, ADOT proposes to meet the maximum feasible portion of its proposed 8.90% overall DBE goal by using race- and gender-neutral measures. As part of the current ongoing 2014-2015 Disparity Study, Keen Independent analyzed a number of factors related to ADOT's race- and gender-neutral DBE program component based on 49 CFR Part 26, including:

- Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
- What has been the agency's past experience in meeting its overall DBE goal?
- What has DBE participation been when the agency did not use race- or gender-conscious measures?<sup>12</sup>
- What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

**1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?** The 2014 Availability Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

The 2015 Disparity Study also provides results of the analyses of MBE/WBE utilization and availability (see Chapters 6 and 7). This information is also summarized below.

**Marketplace Conditions.** As discussed in Chapter 4 of the Disparity Study, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes. However, it is important to note that some minority and female business owners interviewed did not think they had been affected by race or gender discrimination.

**Disparity Analysis.** Utilization of each racial/ethnic group of minority-owned businesses on ADOT FHWA- and state-funded contracts was substantially below what might be expected from the availability analysis. Based on further statistical analysis, Keen Independent rejected chance in the contracting process as an explanation for the disparities for MBEs. (See Chapter 6 for these results.)

For white women-owned firms, some of the analyses indicated disparities and some did not. Results for white women-owned firms were influenced by one large San Diego contractor, Coffman Specialties, which obtained \$74 million of ADOT contract dollars during the study period. This one firm, which had once been denied DBE certification by ADOT due to issues related to ownership and control, was the reason overall utilization of WBEs exceeded availability for FHWA- and state-funded contracts. If Coffman Specialties is not included as a

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<sup>12</sup> USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

WBE, utilization of white women-owned firms on ADOT contracts is somewhat less than availability (4.5% of ADOT FHWA- and state-funded contract dollars compared with 4.7% from the availability analysis).

Further exploration of utilization for contracts with and without goals, ADOT and LPA contracts, time periods and regions of the study identified generally consistent results for MBEs. There was a pattern of substantial disparities for each group of minority-owned firms. Disparity results for construction contracts were similar to results for all contracts, as were the results for all prime contracts, large prime contracts, small prime contracts and subcontracts. Two MBE groups fared better than other DBE groups for engineering-related contracts, as explained in Chapter 7 of the Disparity Study.

**Summary.** The combined information from the marketplace and the disparity analysis indicates substantial evidence of different outcomes for each group of minority-owned firms included in the Federal DBE Program: African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

There is also substantial evidence that there is not a level playing field for women and women-owned firms in the Arizona marketplace. Disparities for women and women-owned firms include:

- Low entry into construction and engineering jobs;
- Lower construction business formation rates (regression analysis controlling for neutral factors);
- Lower business loan approval rates;
- Higher rate of not applying for business loans due to fear of loan denial (regression analysis controlling for neutral factors);
- Lower mean loan values;
- Higher interest rates;
- More likely to report difficulty in obtaining lines of credit or loans;
- More likely to report difficulty obtaining bonding;
- More likely to report insurance requirements as a barrier;
- Relatively few firms awarded contracts or subcontracts of \$1 million or more (after controlling for sub-industry); and
- Lower business earnings (regression analysis after controlling for neutral factors).

If Coffman Specialties is excluded from the analysis (for the reasons outlined in Chapter 6 of the Disparity Study), utilization of WBEs was less than what might be expected based on their availability for this work.

ADOT considered all of this information when determining whether it should include white women-owned firms as eligible for any race- and gender-conscious programs such as meeting DBE contract goals. Based on the information presented above and in the Disparity study, ADOT determined that it would not request a waiver from FHWA to allow it to discontinue utilizing white women-owned to meet DBE contract goals.

**2. What has been the agency's past experience in meeting its overall DBE goal?** ADOT's reported certified DBE participation since it reinstituted DBE contract goals is summarized in Figure 8. As shown, reported DBE participation based on DBE commitments/awards on FHWA-funded contracts was within 1 to 2 percentage points of the goal for those years.

ADOT also reported participation based on payments to DBEs. The data shows participation of slightly more than 4 percent in FFY 2012, FFY 2013 and FFY 2014 after DBE contract goals were reinstated on FHWA-funded contracts. ADOT fell short of overall DBE goals when measured based on payments.

**Figure 8. ADOT overall DBE goal and reported DBE participation on FHWA-funded contracts, FFY 2011 through FFY 2014**

| Federal fiscal year | DBE goal | DBE commitments/ awards | DBE payments | Difference from DBE goal |          |
|---------------------|----------|-------------------------|--------------|--------------------------|----------|
|                     |          |                         |              | Awards                   | Payments |
| 2011                | 8.00 %   | 6.40 %                  | 0.18 %       | -1.60 %                  | -7.82 %  |
| 2012                | 7.76     | 6.82                    | 4.15         | -0.94                    | -3.61    |
| 2013                | 7.76     | 7.25                    | 4.37         | -0.51                    | -3.39    |
| 2014                | 7.76     | 7.33                    | 4.27         | -0.43                    | -3.49    |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

### 3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)? Keen Independent examined three sources of information to assess race-neutral DBE participation:

- DBE participation on FHWA-funded contracts in the most recent three years in which ADOT did not apply DBE contract goals;
- ADOT-reported race-neutral DBE participation on FHWA-funded contracts for the most recent years;
- Keen Independent estimates of DBE participation on FHWA- and state-funded contracts for which no DBE contract goals applied; and
- Information concerning DBE participation as prime contractors.

The discussion in the following two pages examines these four sets of participation figures.

**DBE Participation in Recent Years in Which ADOT Did Not Apply DBE Contract Goals.** ADOT did not apply race- or gender-conscious program elements from the beginning of 2006 until well into FFY 2011. For FFYs 2008, 2009 and 2010, the last three full fiscal years for which DBE contract goals were not applied, reported DBE utilization ranged from 1.21 percent to 2.08 percent based on DBE commitments/awards (median of 2.02 percent). ADOT reported DBE participation ranging from 0.87 to 4.30 percent for those fiscal years based on payments data (median of 4.19 percent), as reported in Figure 9.

**Figure 9. DBE participation on FHWA-funded contracts for most recent three years when DBE contract goals did not apply (FFY 2008-FFY 2010)**

| Federal fiscal year | Commitments/ awards | Payments |
|---------------------|---------------------|----------|
| 2008                | 1.21 %              | 4.19 %   |
| 2009                | 2.02                | 4.30     |
| 2010                | 2.08                | 0.87     |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

**Race-neutral DBE participation in recent ADOT Uniform Reports.** Per USDOT instructions, ADOT counts as “neutral” participation any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

ADOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for the three most recent federal fiscal years indicate race-neutral participation of:



- 2.81 percent in FFY 2012;
- 4.23 percent in FFY 2013; and
- 3.11 percent in FFY 2014.

Figure 10 presents these results. The right-hand column of Figure 10 calculates the share of total participation achieved through neutral means (neutral DBE participation ÷ total DBE participation). In FFY 2014, ADOT achieved 42 percent of its total DBE commitments/awards through neutral means ( $3.11 \div 7.33 = 42\%$ ), higher than in FFY 2012 and lower than in FFY 2013.

**Figure 10. ADOT-reported race-neutral and race-conscious DBE participation on FHWA-funded contracts for FFY 2011, FFY 2012 and FFY 2013**

| Federal fiscal year | DBE commitments/awards |              |                | Share achieved through neutral |
|---------------------|------------------------|--------------|----------------|--------------------------------|
|                     | Total                  | Race-neutral | Race-conscious |                                |
| 2012                | 6.82                   | 2.81         | 4.01           | 41                             |
| 2013                | 7.25                   | 4.23         | 3.02           | 58                             |
| 2014                | 7.33                   | 3.11         | 4.22           | 42                             |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

**DBE Participation on Contracts Without DBE Contract Goals.** Keen Independent also analyzed DBE participation on ADOT's FHWA- and state-funded contracts without DBE contract goals. As reported in Chapter 7 of the Disparity Study, ADOT achieved 5.0 percent DBE participation on these contracts from July 2007 through June 2013.

**DBE Participation as Prime Contractors.** Focusing just on participation as prime contractors, DBEs obtained 2 percent of prime contract dollars on FHWA- and state-funded contracts.

**4. What is the Extent and Effectiveness of Race- and Gender-Neutral Measures That ADOT Currently has in Place and Will Put in Place for the Next Fiscal Year?** When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT reviewed the race- and gender-neutral measures that it and other organizations currently have in place, and those it has planned or could consider for future implementation.

**ADOT Initiatives.** ADOT currently has a broad range of extensive neutral programs and initiatives to encourage participation of small businesses — including DBEs — in its transportation contracts. Examples include:

- Tri-level Business Development Program (BDP) targeting DBEs at different levels of development;
- Outreach events for minority- and women-owned businesses and other small businesses;
- Participation in procurement fairs and similar events throughout the state;
- Regular meetings with the construction and professional services industries;
- Joint meetings and training sessions with the Arizona Chapter of the Associated General Contractors of America (AGC) and the American Council of Engineering Companies of Arizona (ACEC);
- A bi-monthly e-newsletter on DBE news and events, ADOT contract opportunities and other topics;

- Regular webinars and in-person training opportunities covering topics such as finance, bidding, marketing and operations; and
- One-on-one technical assistance.

Figure 11 represent descriptions of some other race- and gender-neutral measures being undertaken by ADOT.

**Figure 11. Some of ADOT's Current Race- and Gender-Neutral Measures**

|                                                                                                                                                                                                                                |                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Outreach recruitment and training events for minority- and women-owned businesses and other small businesses                                                                                                                   | Regular Task Force meetings with the construction and professional services industries                                                                                                   |
| Annual DBE Conferences and Expos                                                                                                                                                                                               | One-on-one technical assistance for DBEs.                                                                                                                                                |
| Provide ADOT, local and federal government agencies, Universities, and other entities projects bidding opportunities on one webpage                                                                                            | Provide DBE/SBC News website/blog featuring ADOT and statewide bidding, training, teaming and financing opportunities                                                                    |
| Regular webinars and in-person training opportunities covering topics such as finance, bidding, marketing and operations (which is held in conjunction with AGC)                                                               | Joint meetings and training sessions with the Arizona Chapter of the Associated General Contractors of America (AGC) and the American Council of Engineering Companies of Arizona (ACEC) |
| Providing construction plans and specifications to DBEs                                                                                                                                                                        | Complaint process for investigating DBE fraud and abuse                                                                                                                                  |
| Participation in procurement fairs and similar events throughout the state                                                                                                                                                     | Bi-weekly e-newsletters on DBE news and events, ADOT contract opportunities and other topics                                                                                             |
| Online Prompt Payment mechanism that requires Prime Constructors to pay subcontractors within 7 calendar days of being paid by ADOT and online mechanism for subcontractors to report to ADOT if they received timely payment. | Training internal staff, consultants, constructors and local public agency staff on DBE recruitment, utilization and compliance                                                          |
| Enrollment in tri-level Business Development Program for new and emerging DBEs, Pacesetter (mid-level) and Master (advanced) level DBEs.                                                                                       | Provide field compliance visits on construction sites to ensure DBEs are performing a commercially useful function                                                                       |
| Holds Summits and other "listening" events with DBEs and stakeholder groups                                                                                                                                                    | Targeted outreach at AZ annual Roads & Streets Conference and other procurement and networking events                                                                                    |
| Operates the AZ UTRACS web portal for online Bidder's List/Vendor Registration, DBE certification and Annual Update, Small Business Concern Registration, DBE/SBC Vendor Directories and online DBE compliance                 | Provides training at pre-bid, post award and pre-construction meetings                                                                                                                   |
| Offers DBE training and one-on-one consulting sessions on construction and engineering related issues                                                                                                                          | Provide email and outreach service for prime consultants and contractors looking for DBEs to work on their projects                                                                      |
| Train Prime consultants and contractors on Good Faith Efforts                                                                                                                                                                  | Offers "Bidding Boot Camp" training proposed by AZ AGC                                                                                                                                   |

Future race and gender initiatives that could impact participation include:

- ADOT operated a mentor-protégé program in past years and recently developed a Small Business Concern (SBC) component of its DBE Program, which it expects to be revised and expanded in the future.
- ADOT has retained Donato Consulting to conduct one-on-one meetings with potential DBEs identified in the 2014 Availability Study to encourage firms to become DBE certified. This is one way to increase reported DBE participation through neutral means, as some of these companies may already be doing business with ADOT. Certification will allow this participation to count toward ADOT's overall DBE goal.
- ADOT plans to expand online information available to small businesses, including DBEs, through a Virtual Business Assistant website. This new website might be launched within the next six months.

- ADOT plans to launch a “Just One More” campaign to encourage Prime Contractors and Consultants to use at least one more DBE and small business beyond what is needed to meet DBE contract goals.

At this time, it is difficult to quantify how much the above initiatives can increase race-neutral participation of DBEs in ADOT’s FHWA-funded contracts.

Keen Independent also examined other potential neutral measures that ADOT could implement. Research into expanded SBC programs, such as SBC contract goals and an SBC set-aside program, indicate that ADOT does not have the authority under state law to implement such measures. Although ADOT will consider further research into these two initiatives, it does not appear that they could be implemented within the FFY 2015 through FFY 2017 time period for which these projections apply).

## Summary

In making decisions about future implementation of the federal DBE program, ADOT considered (1) refinements to its overall DBE goal for FFY 2015 through FFY 2017 for FHWA-funded contracts based on the results of a recently concluded Disparity Study, (2) revisions to its projection of the portion of its overall DBE goal to be achieved through neutral means as a result of the Study, and (3) considered whether all DBE groups will be allowed to participate in any DBE contract goals program, or whether ADOT would request a waiver that limits participation to certain groups.

**1. Overall DBE Goal for FHWA-Funded Contracts.** ADOT considered a refinement to its overall DBE goal based on updated information in a recently completed Disparity Study. As explained in this document and based on data outlined in Chapter 5 and further explored in Chapter 8 of the Disparity Study, ADOT is proposing to refine and establish its FFY 15-17 overall DBE goal at the base figure of 8.90 percent DBE participation, compared to a preliminary goal of 9.38 percent submitted last summer.

**2. Should ADOT Project That it Can Meet All of its Overall DBE goal Through Neutral Means?** ADOT considered whether it can achieve 100 percent of its overall DBE goal through neutral means or whether race-conscious programs are needed. Such a determination depended in part on the level of the overall DBE goal. Since ADOT’s overall DBE goal for FHWA-funded contracts is in the range of 8.90 percent or higher, the evidence presented in this document, in its past history and the Disparity Study indicates that ADOT will not be able to meet its DBE goal solely through neutral means.

ADOT considered all of the information in the Disparity Study and other sources when reaching its decision to implement a race- and gender-conscious programs (including DBE contract goals) to meet its overall DBE goal.

- There is information indicating disparities in outcomes for minorities and women and some qualitative evidence of discrimination within the local transportation contracting marketplace, as summarized in Chapter 4 of the Disparity Study.
- Median annual DBE participation for the last three full federal fiscal years in which ADOT operated a 100 percent neutral program was 2.02 percent based on awards/commitments and 4.19 percent based on payments. This level of participation is considerably below an overall DBE goal in the range of 8.90 percent.

Since ADOT has set DBE contract goals on FHWA-funded contracts for the full federal fiscal year, its reported race-neutral participation has been 2.81 percent (FFY 2012), 4.23 percent (FFY 2013) and 3.11 percent (FFY 2014). Each of these figures for race-neutral participation is well below a future overall DBE goal in the range of 8.90 percent or higher.

Keen Independent estimates 5.0 percent DBE utilization on FHWA- and state-funded contracts without DBE contract goals during the study period. Although this estimate of participation is higher than what ADOT has reported, it is still considerably less than an 8.90 percent overall DBE goal.

- ADOT has extensive neutral measures in place and there are many small business assistance programs offered by other institutions throughout the state. Any additional measures ADOT might be able to immediately institute would probably have only a small impact in comparison with what already exists. It is unlikely that ADOT could increase its neutral participation of DBEs to reach an overall DBE goal in the range of 8.90 percent solely through additional neutral measures.

**3. If ADOT Uses a Combination of Neutral Means and DBE Contract Goals, How Much of the Overall DBE Goal Can ADOT Project to be Met Through Neutral Means?** In fall 2014, ADOT set an overall DBE goal for FHWA-funded contracts for FFY 2015 through FFY 2017 of 9.38% and projected that 5.44 percentage points of its overall goal would be met through neutral means. The additional information provided in the recently completed Disparity Study not only supports a lower overall DBE goal but also a somewhat lower projection of DBE participation achieved through neutral measures, approximately 5.00 percent. This is still above ADOT's projection of 2.68 percent neutral attainment in place for FHWA-funded contracts during the previous three-year period.

Therefore, for the following reasons, ADOT determined that a race-neutral projection of about 5 percentage points for its overall DBE goal for FFY 2015 through FFY 2017 is appropriate:

- Median DBE participation was 4.19 percent for the three most recent federal fiscal years in which ADOT operated a 100 percent neutral program based on ADOT Uniform Reports to FHWA using payment data (as discussed in Chapter 8 of the Disparity Study).
- The race-neutral portion of ADOT's DBE participation was in the range of 3 to 4 percent based on ADOT's reports for FFY 2012 through FFY 2014 (as examined in Chapter 8 of the Disparity Study).
- ADOT neutral initiatives are already considerable, and will continue to expand.
- Keen Independent's analysis of DBE participation on ADOT FHWA- and state-funded contracts without DBE contract goals indicated 5.0 percent utilization of DBEs.

As noted above, last summer ADOT projected a 5.44 percentage point neutral and 3.94 percentage point race-conscious split when it prepared its overall DBE goal of 9.38 percent for FFY 2015 through FFY 2017 after the completion of the 2014 Availability Study. The first column of Figure 12 below presents those projections. The second column of numbers in Figure 12 is being proposed by ADOT using an overall DBE goal of 8.90 percent with a 5.00 percentage point projection for race-neutral for FFY 2015 through FFY 2017. The race-conscious portion of the goal is 3.90 percentage points ( $8.90\% - 5.00\% = 3.90\%$ ). As shown, a 3.90 percentage point projection of DBE participation through race-conscious measures is similar to the 3.94 percentage point race-conscious projection developed in fall 2014.

**Figure 12. Current ADOT Overall DBE Goal and Race-Conscious and Neutral Projections for FHWA-funded Contracts for FFY 2015 through FFY 2017 and Proposed Revised Overall Goal and Projections**

| Component of overall DBE goal for FHWA FFY 2015-FFY 2017 | Fall 2014 | Spring 2015 |
|----------------------------------------------------------|-----------|-------------|
| Overall goal                                             | 9.38 %    | 8.90 %      |
| Neutral projection                                       | 5.44      | 5.00        |
| Race-conscious projection                                | 3.94      | 3.90        |

## Public Participation – 49 CFR Section 26.45(g)

Public participation is a key component of ADOT's process in projecting its overall preliminary DBE goal for FHWA-funded contracts for FFYs 2015-2017. ADOT has made a variety of efforts to engage the public as part of its preliminary DBE goal-setting process in the summer of 2014 and will make similar efforts in the summer of 2015 as it endeavors to finalize its Disparity Study and refine and set a final overall DBE goal for FFYs 2015-2017.

Similar to the spring and summer of 2014, ADOT solicited comments concerning its proposed revised overall goal for DBE participation in FHWA-funded contracts for FFYs 2015 - 2017. It held meetings with the following stakeholder groups in May and June 2015:

- ADOT Internal Departments and Stakeholder Groups on May 14, 2015;
- ADOT External Stakeholders Group on May 18, 2015;
- ADOT DBE Construction and Professional Services Task Forces on May 26, 2015;
- Local Public Agencies on May 28, 2015;
- Arizona Association of General Contractors on May 19, 2015; and
- American Council of Engineering Companies, AZ Chapter on June 9, 2015

On June 8, 2015, ADOT will publish its DBE Goal and Methodology along with the Draft 2015 Disparity Study for public review via a Press Release and its website. ADOT will solicit public review and comment through July 23, 2015. ADOT will make wide-ranging efforts to publicize the goal and opportunities for public input, including distribution of information to more than 4,000 individuals and organizations throughout the state.



**Consultation with Organizations.** ADOT consulted with several contracting groups, community organizations, and other organizations that have information about local marketplace conditions for minority- and women-owned businesses and other companies throughout the course of the Availability and Disparity Study, including:

- ADOT's DBE Professional Services and Construction Task Forces;
- Members of the Arizona Unified Certification Program (AZ UCP);
- American Council of Engineering Companies (ACEC) of Arizona;
- Associated General Contractors (AGC) of Arizona;
- American Indian Chamber of Commerce of Arizona;
- American Subcontractors Association of Arizona;
- Arizona Concrete Promotional Council;
- Arizona Hispanic Chamber of Commerce;
- Arizona Small Business Association;
- Arizona Society of Civil Engineers;
- Grand Canyon Minority Supplier Development Council;
- Great Phoenix Black Chamber of Commerce;
- Minority and Small Business Alliance of Southern Arizona;
- National Association of Women Business Owners – Phoenix Metro Chapter;
- Phoenix Minority Business Development Agency;
- Arizona Transportation Builders Association (Formerly TUCA);
- Yuma Southwest Contractors Association;
- National Association of Minority Contractors (AMC) of Arizona; and
- Minority Supplier Development Council (MSDC).

ADOT will discuss and/or distribute its proposed overall final refined DBE goal and rationale for the goal to a wide variety of businesses and government entities, including 1000+ DBEs, 800+ small businesses, 300+ other contractors, 250+ other consultant engineering firms and 175 Local Public Agencies and Subrecipients of ADOT federal funding. Requests for comments will be made along with the distribution of information. The information will also be distributed to the following organizations and their membership:

- ADOT's DBE Professional Services and Construction Task Forces;
- Members of the Arizona Unified Certification Program (AZ UCP);
- American Council of Engineering Companies (ACEC) of Arizona;
- Associated General Contractors (AGC) of Arizona;
- American Indian Chamber of Commerce of Arizona;
- American Subcontractors Association of Arizona;
- Arizona Concrete Promotional Council;
- Arizona Hispanic Chamber of Commerce;
- Arizona Small Business Association;
- Arizona Society of Civil Engineers (Northern, Southern and Phoenix Chapters);
- Grand Canyon Minority Supplier Development Council;
- Great Phoenix Black Chamber of Commerce;
- Minority and Small Business Alliance of Southern Arizona;
- National Association of Women Business Owners – Phoenix Metro Chapter;
- Phoenix Minority Business Development Agency;
- Arizona Transportation Builders Association (Formerly TUCA);
- Yuma Southwest Contractors Association;
- National Association of Minority Contractors (AMC) of Arizona; and
- Minority Supplier Development Council (MSDC).

**Public Notice.** ADOT will publish a series of public notices announcing its proposed amended overall DBE goal and rationale for the goal in newspapers throughout the state. ADOT will also use email blasts, meetings and other communication tools to make the public aware of the proposed goal. The notices will state that ADOT will accept comments on its overall DBE goal for 45 days. The notices will also be posted on ADOT's website. ADOT will also email a public notice to all certified DBEs and pre-qualified engineering consultants and prime contractors.

**Public Forums.** ADOT will conduct four public hearings in four Arizona locations in the summer of 2015 as it did in the summer of 2014 to provide information about its proposed overall refined final DBE goal and rationale for the goal, as well as to solicit comments about the goal and Disparity Study results from meeting participants. During each public hearing, ADOT will solicit participants for testimony about its goal, Disparity Study and about local marketplace conditions for minority- and women-owned businesses and other companies. Participants will be invited to submit testimony in either verbal or written format. The public hearings that ADOT will conduct will be held on the following dates in the following locations:

- July 8, 2015 at the High Country Conference Center 1899 Ballroom 201 W. Butler Ave. Flagstaff, AZ 86001
- July 13, 2015 at Hilton Garden Inn Yuma Anza/Redondo Room 310 N. Madison Ave. Yuma, AZ 85364
- July 14, 2015 at the Ellie Towne Flowing Wells Community Center 1660 W. Rathrauff Rd. Tucson, AZ 85705
- July 16, 2015 at HRDC (Grand Canyon Room 1), 1130 N 22nd Ave. Phoenix, AZ 85009

All hearings will be held from 3 p.m. – 5:30 p.m. Arizona time with a presentation at 3:15 p.m. to maximize public participation. Attendees will be asked to sign in at each public meeting and will have the opportunity to fill out comment cards. Court reporters will transcribe the questions and answer period and the public comments portion of each public hearing.

Comments on the proposed goal and methodology will also be taken during the 45-day public comment period. Comments can be submitted via:

- Verbal testimony at a public hearing;
- Online at [www.adotdbestudy.com](http://www.adotdbestudy.com) or <http://www.azdot.gov/business/business-engagement-and-compliance/dbe-disparity-study/make-your-voice-heard>;
- Email at [info@adotdbestudy.com](mailto:info@adotdbestudy.com) or directly to ADOT;
- Fax to 928-684-3021; and
- Mail to Keen Independent Research, 172 N. Washington Street, Wickenburg, AZ 85390.

**Appendix A.** Appendix A will provide updated comments received from the public at scheduled public hearings and via email.