

**Disadvantaged Business Enterprise (DBE) Program
Proposed Three-Year Overall
DBE Goal & Methodology for Federal Fiscal Years
2016 through 2018**

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Submitted to

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



Arizona Department of Transportation
Business Engagement & Compliance Office

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION FOR FEDERAL FISCAL YEARS 2016 THROUGH 2018

Introduction

The Arizona Department of Transportation (ADOT) hereby submits its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2016 through 2018 to the Federal Aviation Administration (FAA) pursuant to [49 CFR Part 26, section 26.45](#). ADOT uses FAA funds for contracts at Grand Canyon National Park Airport; therefore, the overall DBE goal pertains to FAA-funded contracts at the Airport.

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 based its goal on data from a recently completed 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. The data from the completed Disparity Study (submitted with this document as supporting information) and the methodology described below produced an overall DBE goal for FFYs 2016 - 2018 of 4.87% for FAA contracts; all of which is expected to be accomplished through race and gender-neutral means (ADOT outreach, training and other program efforts).

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 2015 Disparity Study conducted by Keen Independent.

Based on this information and similar data for all contracts, Keen Independent determined that Arizona should be selected as the relevant geographic market area for the availability study portion of the Disparity Study. About 94% of ADOT and local agency FAA-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 FAA-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 18 FAA-funded transit and research prime contracts and subcontracts valued at \$19,270,000 that ADOT awarded for State FYs 2007 - 2013. All of these contracts were at Grand Canyon National Park Airport. The availability estimate is expressed as the percentage of the associated contracting dollars that one might expect DBEs 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.

Head Count Availability of Minority- and Women-owned Firms

Keen Independent began the availability analysis by building a database of firms that expressed qualifications and interest in ADOT work related to transportation-related construction and engineering, and other goods and services. Keen Independent identified 1,429 companies in Arizona available for that work.

Figure 1 presents the number of businesses included in the availability database for each racial, ethnic and gender group. Of the 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, 500 (about 35%) were MBEs or WBEs.

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

Using the availability database described above, Keen Independent performed an availability analysis for each of the 18 FAA-funded prime contracts and subcontracts during the study period, and then summarized results.

The resulting “dollar-weighted” availability estimate represents the percentage of ADOT transportation contracting dollars that MBEs/WBEs might be expected to receive based on their availability for specific types, sizes and location 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.

Using this dollar-weighted approach typically results in more refined 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 “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.¹

¹ 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>.

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.²

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, 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.*;³ *Western States Paving Company v. Washington State DOT*;⁴ *Rothe Development Corp. v. U.S. Department of Defense*;⁵ and *Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County*⁶).

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 Northern Arizona were counted as available for contracts at Grand Canyon National Park Airport.

² 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.

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

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

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

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

5. Dollar-Weighted Results. Relative availability was determined on a contract-by-contract basis and then dollar-weighted to determine overall DBE availability for FAA-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 18 prime contracts and subcontracts was calculated by dividing the dollars for that prime contract/subcontract by \$19,270,000 (the total FAA-funded contract dollars examined). Small prime contracts or subcontracts received low weights and the largest contracts received the highest weights. For example, availability results for a \$1.9 million prime contract would receive a weight of 10% ($\$1,900,000 \div \$19,270,000 = 10\%$). 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.

Figure 2. Example of an Availability Calculation

One of the subcontracts Keen Independent examined in the disparity study was for landscaping (\$10,500) on a 2013 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 ($62/144 = 43.1\%$).

Source: Keen Independent Availability Analysis from 2014 Availability Study

Keen Independent used the approach described above to estimate the availability of MBE/WBEs and majority-owned businesses for FAA-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 groups for those contracts. Overall, MBE/WBE availability for FAA-funded contracts is 24.78 percent. Dollar-weighted availability was highest for Hispanic American-owned businesses (9.33%), white women-owned firms (7.96%) and Native American-owned companies (3.55%). Availability was 0.90 percent for African American-owned businesses, and less than 2 percent for Subcontinent Asian American-owned firms (1.79%) and Asian-Pacific American-owned companies (1.25%).

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

Race/ethnicity and gender	FAA
African American-owned	0.90 %
Asian-Pacific American-owned	1.25
Subcontinent Asian American-owned	1.79
Hispanic American-owned	9.33
Native American-owned	<u>3.55</u>
Total MBE	16.82 %
WBE (white women-owned)	<u>7.96</u>
Total MBE/WBE	24.78 %

Source: Keen Independent 2015 DBE Availability and Disparity Study

Calculation of Final Base Figure for ADOT’s Overall FAA DBE Goal

Keen Independent considered whether it was appropriate to use 24.78 percent or a value close to those results as ADOT’s base figure for FAA-funded contracts. As described in Chapter 19 of the Disparity Study, Keen Independent instead recommended using dollar-weighted availability for current DBEs, not all MBE/WBEs, as the approach to calculating the base figure analysis for FAA-funded contracts.

- Keen Independent determined that about 20 percentage points of the 24.78 percent availability figure for MBE/WBEs are firms that are not currently certified as DBEs. Achieving utilization close to this goal would require many non-DBE firms to immediately become certified.
- ADOT retained Donato Consulting to research potential DBEs identified in the 2014 Availability Study. The Donato Consulting follow-up interviews with potential DBEs found that many would not qualify or were not interested in DBE certification with ADOT. Therefore, it might not be appropriate to use non-certified MBE/WBEs to determine the base figure for FAA-funded contracts.
- A goal of 24.78 percent is more than seven times ADOT’s current goal for FAA-funded contracts (3.38%).
- For these reasons, Keen Independent recommended that ADOT use currently-certified DBEs in the base figure analysis for FAA-funded contracts.

Keen Independent’s analysis indicates that the dollar-weighted availability of current DBEs is 4.87 percent for ADOT’s FAA-funded contracts based on current availability information and analysis of FAA-funded contracts awarded from July 2007 through June 2013. Chapter 5 of the Disparity Study explains the methodology for the base figure calculation in considerable detail.

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

Per the Federal DBE Program, ADOT considered potential step 2 adjustments to the base figure as part of determining its overall annual DBE goal for FAA-funded contracts. Federal regulations outline factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training, and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.⁷

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 is still relevant to ADOT as it was determining 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 FAA. ADOT reported no prime contract or subcontract awards or payments to DBEs in its FFY 2012, FFY 2013 and FFY 2014 in Uniform Reports of DBE Awards or Commitments and Payments reported to the FAA. (Median DBE participation based these data for these three years is 0.00 percent.)

DBE participation based on Keen Independent utilization analysis for FAA- funded contracts. The Keen Independent study team collected FAA-funded contract information directly from Grand Canyon National Park Airport. The study team identified two contracts going to one DBE firm totaling \$1.3 million (one contract in 2010 and one in 2013). Based on this data, DBE participation on FAA-funded contracts was 6.9 percent.

ADOT considered this data when determining whether to make a step 2 adjustment based on past DBE participation and decided that the 6.90 percent figure in the Disparity Study provided more accurate information on DBE utilization.

2. Information related to employment, self-employment, education, training, and unions. Chapter 4 of the Disparity Study summarizes information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Arizona are presented in Appendices E through H of the Disparity Study. Keen Independent's analyses indicate 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.

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 in Chapter 8.

⁷ 49 CFR Section 26.45.

The study team used regression analyses 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).⁸ 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.

In Chapter 8, of the Disparity Study, Keen Independent analyzed the impact that barriers in business ownership would have on the base figure for FAA-funded contracts 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.

The analysis indicated a possible upward step 2 adjustment of 3.71 percentage points (see Figure 8-2 in Chapter 8 of the Disparity Study). This range of potential upward adjustment, 3.71 percentage points, might reasonably apply to the overall goal for FAA-funded contracts as well.

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- 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 MBE/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.

Note that financing and bonding are closely linked, as discussed in Chapter 4 and Appendix J of the Disparity Study.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT’s overall annual goal for DBE participation in FAA-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.⁹

Among the “other factors” examined in this disparity study was the success of MBE/WBEs relative to majority-owned businesses in the Arizona marketplace. There is quantitative 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. Chapter 4 of the Disparity Study summarizes that evidence and Appendix H presents supporting quantitative analyses. There is also qualitative evidence of barriers to the success of

⁸ 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.

⁹ 49 CFR Section 26.45.

minority- and women-owned businesses, as summarized in Chapter 4 of the Disparity Study. 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. Quantification of potential 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 based this determination on its reported 0 percent DBE participation in recent years for FAA contracts.

However, DBE participation estimated by Keen Independent indicated 6.9 percent participation over the study period and a contract to a DBE as recently as 2013. This might indicate an upward step 2 adjustment, or no adjustment at all.

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 10-2. If ADOT made this upward adjustment, the overall DBE goal for FAA-funded contracts would be $4.87 + 3.71 = 8.58$ percent.

3. Any disparities in the ability of DBEs to get 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, had to consider whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal.

ADOT chose not to make a step 2 adjustment based on the information from the Disparity Study data.

- ADOT only began tracking DBE utilization on FAA-funded contracts in recent years, so it is difficult to consider an upward or downward adjustment based on demonstrated capacity of DBEs to perform these contracts.
- An overall goal of 4.87 percent is considerably higher than ADOT’s current three-year goal for FAA-funded contracts (3.30%). ADOT may need to make substantial new effort to meet this higher goal. Increasing the goal further might not be appropriate given the level of ADOT’s recent goal.

ADOT might be able to consider potential upward adjustments in the future if it demonstrates it can consistently meet an overall goal of 4.87 percent or more.

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 4.87 percent overall DBE goal by using race- and gender-neutral measures. As part of the recently completed 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?¹⁰
- 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 2015 Disparity Study provides results of the local marketplace research (summarized in Chapter 4) and 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.

ADOT reviewed the information about marketplace conditions presented in Chapter 4 and Appendices E through H of the Disparity Study, as well as other information, when it considered the extent to which it can meet its overall DBE goal through neutral measures.

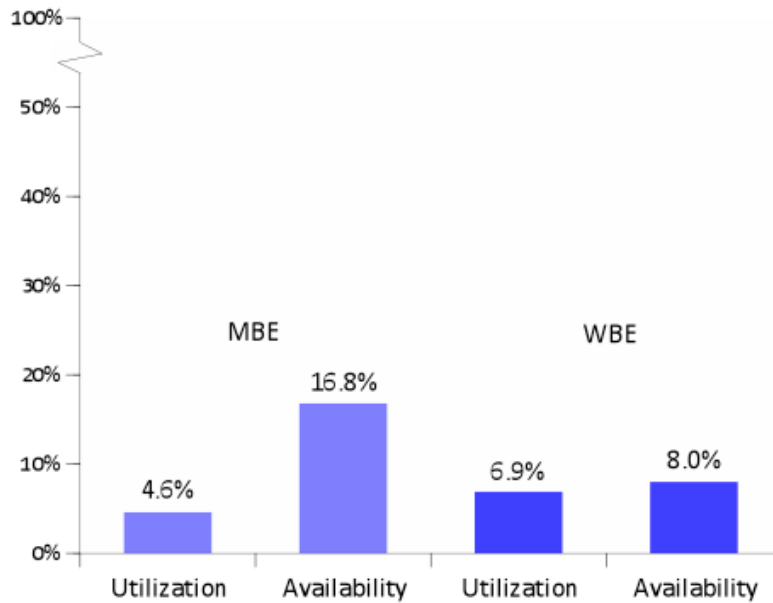
Disparity Analysis. There was a substantial disparity between the utilization of MBE/WBEs combined (11.5%) and what might be expected from the availability analysis for MBE/WBEs (24.8%). The disparity index was 46.

- MBEs received one contract that represented 4.5 percent of FAA-funded contract dollars, less than what might be expected based on the availability analysis for MBEs for these contracts (16.8%). The disparity index for MBEs was 27.
- White women-owned firms received 6.7 percent of contract dollars, also less than the 8.0 percent that might be expected based on the availability analysis for FAA-funded contracts. The disparity index for WBEs was 86.

Figure 4 presents overall utilization and availability results for MBEs and WBEs in FAA-funded contracts.

¹⁰ 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.

Figure 4. MBE and WBE utilization and availability for FAA-funded contracts, July 2007-June 2013



Note: Number of contracts/subcontracts analyzed is 18.
Source: Keen Independent disparity analysis.

Summary. There is substantial evidence that there is not a level playing for minority- and women-owned firms in the Arizona marketplace.

2. What has been the agency’s past experience in meeting its overall DBE goal? As ADOT reported no DBE participation in FFYs 2012, 2013 and 2014, it did not meet its goal of 3.30 percent in any of those years based on its Uniform Reports. However, during the course of its study Keen Independent found data for July 2007 through June 2013, which indicated that ADOT utilization of DBEs (6.7%) was higher than its current 3.30 percent overall goal for FAA-funded contracts.

Therefore, ADOT considered the information for DBE participation in FAA-funded contracts developed as part of the Disparity Study. Based on those results, it appears that ADOT could meet a goal in the range of 4.87 percent solely through neutral means.

3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)? All of ADOT’s DBE participation on FAA contracts has been in a race and gender neutral environment without the application of DBE contract goals or other race and gender-conscious programs.

4. What are 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 5 represents descriptions of some other race- and gender-neutral measures being undertaken by ADOT.

Figure 5. 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 Contractors to pay subcontractors within 7 calendar days of being paid by ADOT and an online mechanism for subcontractors to report to ADOT if they received timely payments.	Training internal staff, consultants, contractors 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 and 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 ADOT's FAA aspirational DBE goal.

At this time, it is difficult to quantify how much the above initiatives can increase race-neutral participation of DBEs in ADOT's FAA-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 2017 through FFY 2019 time period for which these projections apply (or ever implemented).

Summary. In making decisions about future implementation of the federal DBE program, ADOT considered (1) all of the information above based on the results of a recently concluded Disparity Study to determine its overall DBE goal for FFY 2017 through FFY 2019 for FAA-funded contracts; and (2) projection of the portion of its overall DBE goal to be achieved through neutral means.

1. Overall DBE goal for FAA-funded contracts. ADOT is proposing an overall DBE goal of 4.87 percent based on information in the Disparity Study.

2. Should ADOT project that it can meet all of its overall DBE goal through neutral means? Based on the results of the Disparity Study, ADOT concluded that it can achieve 100 percent of its overall DBE goal through neutral means. The historical information summarized in Chapter 9 of the Disparity Study supports the conclusion that ADOT can achieve an overall DBE goal of 4.87 percent entirely through race and gender-neutral means.

Public Participation – 49 CFR Section 26.45(g)

Public participation is a key component of ADOT’s process in projecting its overall DBE goal for FAA-funded contracts for FFYs 2016-2018. ADOT has made a variety of efforts to engage the public as part of its DBE goal-setting process. 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 published its FAA DBE Goal and Methodology along with the Draft 2015 Disparity Study for public review via a Press Release and its website. ADOT also solicited public review and comment through July 23, 2015. ADOT made 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 discussed and/or distributed 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 were made along with the distribution of information. The information was also 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 published a series of public notices announcing its proposed overall FAA DBE goal and rationale for the goal in newspapers throughout the state. ADOT also used email blasts, meetings and other communication tools to make the public aware of the proposed goal. The notices stated that ADOT would accept comments on its overall DBE goal for 45 days. The notices were also posted on ADOT’s website. ADOT also emailed a public notice to all certified DBEs and pre-qualified engineering consultants and prime contractors.

Public Forums. ADOT conducted four public hearings in four Arizona locations in the summer of 2015 to provide information about its proposed overall FAA 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 solicited participants for testimony about its goal, Disparity Study, and about local marketplace conditions for minority- and women-owned businesses and other companies. Participants were invited to submit testimony in either verbal or written format. The public hearings that ADOT conducted were held on the following dates in the following locations:

- Flagstaff, AZ – July 8, 2015; High Country Conference Center 1899 Ballroom 201 W. Butler Ave. Flagstaff, AZ 86001
- Yuma, AZ - July 13, 2015; Hilton Garden Inn Yuma Anza/Redondo Room 301 N. Madison Ave. Yuma, AZ 85364
- Tucson, AZ - July 14, 2015; Ellie Towne Flowing Wells Community Center 1660 W. Rathrauff Rd. Tucson, AZ 85705
- Phoenix, AZ - July 16, 2015 Human Resources Development Center 1130 N. 22nd Ave., Phoenix 85009

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

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

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

Appendix A. The following portion of the document presents attendance and testimony that ADOT collected from each of the four public forums as well as written testimony that individuals submitted outside of public hearings.

- Attendance for the four public hearing locations totaled 21 people, not including ADOT, FHWA or Keen Independent study team representatives. No members of the public participated in the Flagstaff public hearing and four came to the Yuma public hearing. A total of four people signed in

at the Tucson public hearing and 13 individuals signed in at the Phoenix public hearing. It is possible that some members of the public attended without signing in.

- Public hearing participants spoke at three of the four hearings. Eleven different people had questions or comments (counting once anyone providing comments at more than one hearing).
- From June 8 through July 23, 2015, seven different individuals or organizations submitted written comments (counting once multiple submissions of similar comments from the same individual or group).

This Summary organizes verbal and written comments by topic.

Comments at the Public Meetings

There were opportunities for public meeting participants to hear a presentation about the Disparity Study and ADOT's proposed overall DBE goals, as well as about other topics. During the presentation or the later discussion, each participant was offered the opportunity to provide public comments. The following uses numbers rather than names of individuals to identify individuals providing verbal or written comments. Keen Independent coded verbal comments from individuals at the public meetings with a "PM" number and written comments with a "WT" number, beginning with the next numbers in sequence after the similar public meeting process in 2014.

Discussion of ADOT's proposed overall DBE goals. A representative of an airport [PM#28] commented on ADOT's proposed overall DBE goals: "Their goals are lower than ours."

A Principal in a DBE-certified engineering firm [PM#32] asked whether the goal is to "encourage utilization to be close to availability" or whether "there is a direct goal of trying to get more availability ... directly affect more DBEs entering the availability pool." [A team representative answered that the Federal DBE Program encourages both.]

The minority female owner of a professional services firm [PM#45] reported, "Historically we have not had prime contractors regularly submit good-faith efforts when bidding Higher goals that reflect DBE availability absent the effect of discrimination would provide real time information on DBE availability and capacity. I would support a goal that reflects the actual DBE availability absent the effects of discrimination."

Impact of higher overall goal and DBE contract goals. The owner of a DBE-certified minority-owned general contracting and engineering company provided written comments[WT#15] indicating that, although his company has been in business for many years, "It is only until recently that companies have made the effort and have awarded us bids as DBE. Why? because the percentage has gone up." He strongly recommended that the DBE percentage remain higher and that a mentor-protégé and a set-aside program be implemented.

Continued inclusion of white women-owned DBEs as eligible to meet DBE contract goals. Several comments pertained to ADOT's proposal to not change the DBE groups eligible to meet DBE contract goals.

The female owner an engineering-related firm [PM#33] said that she was in support of ADOT's decision to have white women-owned DBEs count toward DBE contract goals. "We really appreciate that ADOT made that decision."

A Principal of a DBE-certified engineering firm provided written comments [WT#17] supporting ADOT's proposal that white women-owned firms remain eligible to meet DBE contract goals. "Thank you for the presentation on the disparity analysis that ADOT is currently undergoing for Disadvantaged Business Enterprises. As I understand it, the women owned business enterprise that provide engineering design and

construction services exceed the 80% [disparity index] threshold for being considered as a DBE, but ADOT has chosen to still consider these businesses as DBE's [eligible to meet DBE contract goals]. I am in support of this decision. Furthermore, it is my understanding the disparity analysis groups together women owned business enterprises that provide engineering planning/design and construction services. The revenue differential between planning/design and construction services is significant, and it appears that the planning/design portion [consider alone] falls well below the threshold. If this is the case, I would like to suggest that the planning/design portion of this group be considered separately from the construction services in determining if the group meets the required threshold limits. Thank you for your consideration."

The female president of an engineering firm also wrote in support of ADOT's proposal that white women-owned DBEs remain eligible to meet DBE contract goals [WT#18]. "It has come to our attention that ADOT continues to support WBE's in its DBE certification and goal setting program even though the Disparity Study found a 95% utilization rate [disparity index] for WBE's in FHWA governed contracts. We at [our company] fully support this decision. We understand that these findings were based on combining WBE construction contracts with design/planning contracts. The study specifies that on ADOT engineering related contracts only 3% WBEs were able to propose and their success rate as was at 0%. These findings show that WBEs utilization rate is not uniform through all disciplines. The group experiences severe disparity and substantial disadvantage in important work categories related to ADOT contracts and therefore deserves the continued protection of the DBE program."

She [WT#18] went on to write, "For future disparity studies, we would like to suggest that the design/planning consulting portion of WBE's be studied separately from the construction WBE's as the revenue differential is significant between design/planning projects and construction projects. Thank you again for your support of WBE within the DBE certification program."

The president of a minority business trade association [WT#19] submitted written comments on behalf of his board of directors and members in support of ADOT's proposed inclusion of white women-owned firms as eligible to meet DBE contract goals. "It was noted in the findings of the Disparity Study performed by Keen Independent Research there was a utilization rate [disparity index] of Woman Business owners who are DBEs at 123%. This would show there is no disparity for women owned businesses. The over utilization was due to one company Coffman Specialties who received considerable large contracts that accounted for the over utilization. Further research showed Coffman Specialties was not eligible and denied DBE Certification. Removal of Coffman Specialties numbers from the study brought the utilization to around 90 percent utilization [disparity index] of Women DBEs showing there still is disparity."

"[The organization] strongly encourages that the Arizona Department of Transportation not pursue a waiver from the Federal Highway Administration to exclude Women DBEs from the DBE Program. Women DBEs are a vital part of the DBE Program and we feel it would be an injustice to them as well as degrade the program as a whole." [WT#19]

Impact of DBE contract goals on non-DBE firms. A representative of a non-DBE trucking firm [PM#38] reported that his company had done a lot of ADOT work over the years, but "in about 2014 or the end of '14, the DBE rates [goals] have been raised. And the unintended consequence of that is that, in fact, our firm has not gotten on ADOT job, paving job, this year in 2015, and we've always done quite a bit of ADOT work."

"I'd like to comment that we have not always been the lowest bid. I mean, I recognize that, but I've been told often enough that 'I can't give you the work because I have to meet my DBE goals.' And this falls into ... the inordinate amount of weight going to one specific industry or another. It's happening now ... and it's happening to a great extent." "I think we need to continue to look at this overweighting, the easy way to achieve the DBE goal by going to trucking, because we can't continue to survive without bring it upward."

“One of the contributing factors to this disparity is the fact that a lot of the ADOT work now that’s come up in the past year or two is what we call ‘pave and preservation,’ which is just ‘mill and fill.’ And you’ve got a striper guy out there and you’ve got a guy that does milling, and so where else are you going to get your [DBE] participation ... you have to get trucking.”

After listening to this comment, the president of a minority business association [PM#40] observed, “Looking back at this gentleman’s issue, I would look at it that DBE firms are stepping up their game and meeting the requirements necessary to go and do that work and compete with non-DBE firms.” The representative of a non-DBE trucking firm [PM#38] responded, “DBE firms have overloaded themselves. They can’t perform the work. I’m getting called to numerous jobs, ‘please come bail us out, we need trucks, we can’t get the trucks, these guys have overcommitted, they can’t get it done.’ So we are going back up there to try and help out as best we can.”

SDVOSB qualifying as a DBE. One individual who made a written comment [WT#14] stated, “If ADOT follows the Federal guidelines how come SDVOSBs [service-disabled veteran-owned small business concerns] aren’t recognized as DBE?”

ADOT’s technical assistance, paperwork and regulations. A Principal in a DBE-certified engineering firm [PM#32] said, “The assistance that ADOT gives, from our experience with our company ... the assistance that ADOT gives in terms of dealing with the paperwork and the compliance and the regulations is very beneficial. It doesn’t reduce the amount of it, though, and that’s still a barrier to entry for small businesses.”

Bidding process for construction contracts. A State Senator reported [PM#29] that she has constituents who are owners of companies who do highway projects. “I want to know ... it seems like, down here in Yuma County ... [that projects] are done by companies out of Maricopa County. We are large enough now in Yuma County to be able to handle large projects, and have the businesses that can do them and would like to be considered for ones that are designated for Yuma County.” In response, an ADOT representative went through the low bid process typically used by local governments for construction contracts.

A City of Yuma staff member [PM#27] also reported how bids were advertised, “We posted through AZPurchasing which posts our bids as well as pretty much everywhere in Arizona. And then any company that is registered through that website or that will see it in the newspaper, they would go in, download all the documents for the bid, and then they will have to meet our, you know, insurance requirements. That’s one of the big ones.” She went on to report that bonding was required and that contractor qualifications to do the job are reviewed.

Existence of a “good ol’ boy” network. The minority female co-founder of a services firm [PM#43] commented on the existence of a “good ol’ boy” network. She said, “Well, the good old boy network as it stands ... and was one of those who believed that unless you are part of that group that have been doing business with the same people all the time, the opportunity to bring new minority women-owned business are very slim.” She went on to say, “The amount of work that we have received is very minimal” “So it isn’t like people don’t know who you are. It’s more that whoever they have been doing business with and they’re comfortable with, that’s who they stick with. So my suggestion was that there’s got to be a way to establish some kind of incentive to the primes that will give an opportunity to those companies that they have not used in the past; otherwise, they will continue to work with those people who they’re comfortable with.”

Unfair bidding. One individual submitting written comments [WT#14] reported that there were unfair bidding practices regarding supplies on a large ADOT project. It appeared, according to the commenter, that a supplier underbid certain items in order to get other parts of the entire bid where it had distributorship advantages. He reported, “This is unfair to other suppliers who only offer one or two items and can[t] compete with the million \$ Corp. This is been going on for quite a while with ADOT knowing of the problem but don’t want to fix

it because [these] are the same companies who have deep pockets and pay for golf outings, sponsor out of town conferences, etc.”

Insurance requirements that prime contractors apply to subcontractors. The owner of a DBE-certified minority-owned construction-related business [PM#31] reported unfair treatment by prime contractors that require excessive insurance coverage by subcontractors. “Well I don’t have a problem meeting the ADOT requirements. It’s the contractor requirements that I have a problem with ... the contracts that I get make me the prime insurer of the project, basically, and I can’t keep them.”

Prompt payment. The owner of a DBE-certified minority-owned general contracting and engineering company [WT#15] wrote, “... we have also experienced what are considered discriminatory practices by not being paid under the prompt payment act and the General Contractors withholding a retention Further, that guidelines be placed to prevent General Contractors from withholding payment and arbitrarily accusing DBE of delay of job.”

Overall comments on the disparity study. A representative of a local public agency provided a written comment [WT#16] indicating that “the presentation and the methodology look thorough” and went on to provide some suggestions about how to organize it so that it is easier to follow.

A State Senator reported [PM#29] said that “All I have to say is that the work that you did was enormous.”

A representative of an airport [PM#30] said “This is extremely valuable for us because we have the same requirement to do the same document that you guys have just produced”