

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

## PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION

### TO FTA FOR FEDERAL FISCAL YEARS 2022 THROUGH 2024

#### AUGUST 2020

## Introduction

The Arizona Department of Transportation (ADOT) hereby submits its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2022 through 2024 to the Federal Transit Administration (FTA) pursuant to [49 CFR Part 26, section 26.45](#).

Based on the results of a Disparity Study conducted in 2020 (also provided to FTA) by Keen Independent Research (Keen Independent), ADOT proposes a 14.64% DBE goal for FFYs 2022 through 2024 for FTA-funded contracts. ADOT projects that it can accomplish this goal solely through race-neutral means (ADOT outreach, training and 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 the base figure from a DBE availability analysis conducted by Keen Independent as part of the 2020 Disparity Study. Keen Independent also prepared the 2014 Availability Study, 2015 Disparity Study and 2017 Availability Study for ADOT.

The availability analysis determined the percentage of ADOT FTA-funded contracts from October 2013 through September 2018 that might go to current or potential DBEs (defined on page 2) if they had the same chance of winning that work as any other available firm, after accounting for the type, size and location of those prime contracts and subcontracts. ADOT used a dollar-weighted approach to determine this overall availability estimate.

October 2013 through September 2018 were the five most recent completed fiscal years at the time of the 2020 Disparity Study. There were 305 ADOT- and local agency-awarded prime contracts and 16 associated subcontracts that were FTA-funded during this time period. Contract dollars for FTA-funded projects totaled approximately \$31 million.

The types, sizes and locations of FTA-funded contracts and subcontracts from October 2013 through September 2018 were similar to the work anticipated for FTA-funded contracts for FFY 2022 through FFY 2024. Therefore, an availability analysis for those five fiscal years of FTA-funded contracts provides a reasonable projection of the percentage of FTA-funded contract dollars that might go to available DBEs for FFY 2022 through FFY 2024.

As presented in Chapter 5 of the Disparity Study report, one might expect current and potential DBEs to receive 14.64% of ADOT FTA-funded transportation contract dollars based on analysis of FTA-funded contracts from October 2013 through September 2018 and current availability of firms to perform that work.

This section explains how the relative availability of current and potential DBEs was calculated.

ADOT considered possible options for a database of available firms (DBEs and non-DBEs) to use when examining availability for individual October 2013 through September 2018 prime contracts and subcontracts.

- Based on analysis of FTA-funded contracts for October 2013 through September 2018, Keen Independent determined that Arizona should be selected as the relevant geographic market area for the availability study.

At least 88% of ADOT and local agency FTA-funded contract dollars from October 2013 through September 2018 went to firms with locations in Arizona.

Therefore, the availability analysis examined firms with locations in Arizona. (The geographic market area for the availability analysis is identical to the 2014, 2015 and 2017 studies.)

- Keen Independent also examined the types of work involved in FTA-funded contracts from October 2013 through September 2018. There were 32 types of work that accounted for 97% of FTA-funded contract dollars. The availability analysis focuses on firms performing these 32 types of work.

**DBE Availability.** As briefly set out below and explained in detail in Chapter 5 and Appendix D of the 2020 Disparity Study report, Keen Independent compiled a master availability database and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an availability figure of 14.64% for ADOT’s FTA-funded transportation contracts.

Availability 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. In the base figure analysis, firms considered as DBEs were those businesses that were DBE-certified or appeared that they could be DBE-certified based on revenue criteria described in federal regulations including 49 CFR Section 26.65.

Master Availability Database. Keen Independent developed a master availability database (current and potential DBEs and non-DBEs) by contacting thousands of firms to collect information about availability for ADOT contracts. The firms contacted for the database came from sources including, but not limited to:

- Companies that had previously identified themselves to ADOT as interested in learning about future work by being prequalified for certain types of work or by being on bidding lists; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related subindustries in Arizona (D&B’s Hoover’s business establishment database). (D&B’s Hoover’s database is accepted as the most comprehensive and complete source of business listings in the nation.)

Keen Independent completed surveys with 4,859 Arizona businesses. After consolidating duplicate responses and removing companies that are no longer in business, not-for-profit, unable to perform transportation-related work, not located in Arizona or uninterested in discussing availability for ADOT work, the final database contains 996 businesses, of which 396 (about 40%) were minority- or women-owned (MBE or WBE). (See Figure 1 on the following page.)

**Figure 1. Availability “Head Count” of Businesses Included in 2020 Disparity Study**

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	40	4.0 %
Asian-Pacific American-owned	12	1.2
Subcontinent Asian American-owned	11	1.1
Hispanic American-owned	143	14.4
Native American-owned	23	2.3
<b>Total MBE</b>	<b>229</b>	<b>23.0 %</b>
WBE (white women-owned)	167	16.8
<b>Total MBE/WBE</b>	<b>396</b>	<b>39.8 %</b>
Majority-owned firms	600	60.2
<b>Total</b>	<b>996</b>	<b>100.0 %</b>

Note: Numbers rounded to nearest tenth of 1%.

Source: Keen Independent Research 2020 Disparity Study (Chapter 5, page 7).

**Head Count DBE Availability.** The 40% figure represents a simple “head count” of MBE and WBE firms and is only the initial stage of calculating the DBE availability base figure. The availability calculation is further refined by dollar-weighting and by removing any MBE or WBE firms that are ineligible to become DBE-certified from the potential DBE count.

**Dollar-Weighted Availability.** The “head count” data were further analyzed to produce “dollar-weighted” availability estimates, which represent the percentage of ADOT transportation contracting dollars that DBEs might be expected to receive based on their availability for specific types, sizes and locations of ADOT FTA-funded 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 321 FTA-funded prime contracts and subcontracts during the study period, and then summarized results.

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

<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>

The type of work was taken into account by examining 32 different subindustries related to construction and engineering as part of estimating availability for ADOT 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 (or which were found to have had prime contracts in the previous six years based on ADOT contract data) were counted as available for prime contracts.
  - Only businesses that reported being qualified for and interested in working as subcontractors (or which were found to have had subcontracts in the previous six years based on ADOT contract data) were counted as available for subcontracts.
  - Businesses that reported being qualified for and interested in working as both prime contractors and subcontractors (or performed prime contractor or subcontractor work for ADOT or local agencies in the previous six years based on contract data) 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 six 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 a contract of an equivalent or greater dollar value in Arizona in the six years prior to the time the firm was surveyed.

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.

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<sup>2</sup> The subindustries considered included: general road construction and widening; bridge work; electrical work including lighting and signals; structural steel work; excavation, site prep, grading and drainage; wrecking and demolition; landscaping and related work; installation of guardrails, fencing or signs (traffic or highway signs); asphalt paving; Portland cement concrete paving; concrete flatwork, including sidewalk, curb and gutter; drilling and foundations; concrete pumping; concrete cutting; pavement milling; structural concrete work; painting for road or bridge projects; striping or pavement marking; temporary traffic control; trucking and hauling; underground utilities; construction remediation and clean-up; construction management; architecture and engineering; soils and materials testing; transportation planning; environmental consulting; surveying and mapping; aggregate materials supply; asphalt, concrete or other paving materials; petroleum; and transit services.

<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 (9th Cir. April 16, 2013).

<sup>4</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th 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).

5. **Dollar-Weighted Results.** Relative availability was determined on a contract-by-contract basis and then dollar-weighted to determine overall DBE availability for FTA-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 321 prime contracts and subcontracts was calculated by dividing the dollars for that prime contract/subcontract by \$30,600,000 (the total FTA-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 \$306,000 prime contract would receive a weight of 1% ( $\$306,000 \div \$30,600,000 = 1\%$ ). 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. Keen Independent repeated these calculations for each of the 321 prime contracts and subcontracts during the study period.

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

One of the subcontracts Keen Independent examined in the 2020 Disparity Study was for transportation planning (\$16,975) on a 2018 contract for the Sun Corridor Metropolitan Planning Organization. To determine the number of DBEs and other firms available for that subcontract, Keen Independent identified businesses in the availability database that:

- a. Were in business in 2018;
- b. Indicated that they performed transportation planning on transportation-related projects;
- c. Reported working or bidding on subcontracts in Arizona in the prior six years;
- d. Reported bidding on work of similar or greater size in the prior six years;
- e. Reported ability to perform work in Southern Arizona; and
- f. Reported qualifications and interest in working as a subcontractor on ADOT transportation projects.

There were 44 businesses in the availability database that met those criteria. Of those businesses, 16 were DBEs. Therefore, DBE availability for the subcontract was 36% ( $16 \div 44 = 36.4\%$ ).

The weight applied to this contract was  $\$16,975 \div \$31 \text{ million} = 0.05\%$ . (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 Research analysis.

**Summing the Dollar-Weighted Availability.** Keen Independent performed the calculations presented in Figure 2 for 321 FTA-funded prime contracts and subcontracts for the study period. When Keen Independent summed the results all contracts, overall dollar-weighted DBE availability for FTA-funded contracts was 22.82%.

Keen Independent used the approach described above to estimate the availability of current and potential DBEs for FTA-funded prime contracts and subcontracts that ADOT and local agencies awarded during the study period.

Figure 3 below presents overall dollar-weighted availability by MBE/WBE group for ADOT FTA-funded contracts. Keen Independent’s availability analysis for ADOT and local agency FTA-funded contracts indicates that MBE/WBEs might be expected to receive about 23% of these contract dollars, somewhat less than the “headcount” availability in Figure 1. Dollar-weighted availability was highest for Hispanic American-owned (6.75%) and white women-owned companies (11.99%).

**Figure 3. Overall Dollar-Weighted Availability Estimates by MBE/WBE Group for ADOT FTA-Funded Contracts, October 2013–September 2018**

Race/ethnicity and gender	FTA
African American-owned	1.78 %
Asian-Pacific American-owned	0.53
Subcontinent Asian American-owned	0.76
Hispanic American-owned	6.75
Native American-owned	1.02
Total MBE	10.84 %
WBE (white women-owned)	11.99
<b>Total MBE/WBE</b>	<b>22.82 %</b>
Total majority-owned	77.18
<b>Total</b>	<b>100.00 %</b>

Note: Results include potential DBEs.

Source: Keen Independent Research 2020 ADOT Disparity Study (Chapter 5, page 13).

**Potential and Certified DBE Availability Adjustments.** To determine the DBE base figure, which focuses on availability of currently certified DBEs and firms that could be certified as DBEs, Keen Independent refined the 22.82% dollar-weighted availability figure by not counting any MBE or WBE firms as potential DBEs that appear to be ineligible for certification. The following groups of MBE/WBEs did not count as potential DBEs when calculating the base figure:

- Firms 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);
- Businesses in the availability interviews that reported having average annual revenue over three years that exceeded the revenue limits for DBE certification for their subindustry;
- MBE/WBEs that, upon telephone and email follow-up by ADOT in 2019, indicated that they would not qualify for DBE certification or were not interested in certification, or could not be reached when ADOT attempted to follow up with them; and
- Firms that did not have an active account in the Arizona Corporation Commission.

After subtracting the availability of these three categories of MBE/WBEs, the dollar-weighted availability for current and potential DBEs is 14.64%, or 8.18 percentage points lower than total MBE/WBE availability. This information is shown in Figure 4 below.

**Figure 4. Overall Dollar-Weighted Availability Estimates for DBEs for ADOT FTA-Funded Contracts, October 2013–September 2018**

Calculation of base figure	FTA
Total MBE/WBE	22.82 %
Less firms that graduated from the DBE Program or were denied DBE certification in recent years or exceed revenue thresholds or indicated that they were not interested in DBE certification or did not have an active account with the Arizona Corporation Commission	8.18
Subtotal	14.64 %
Plus white male-owned DBEs	--
Current and potential DBEs	14.64 %

Source: Keen Independent Research 2020 Disparity Study (Chapter 5, page 17).

**Base Figure.** The base figure representing potential and certified DBEs available for ADOT’s FTA-funded contracts is 14.64%. Figure 5 below compares overall dollar-weighted availability estimates for those contracts (right-hand column) with the same analysis for FTA-funded contracts in the 2015 Disparity Study and 2017 Availability Study. DBE availability was found to be somewhat higher in the 2020 Disparity Study than in the previous two studies, which may be due to the mix of contracts and worktypes during each report’s respective study period.

**Figure 5. Comparison of Overall Dollar-Weighted Availability Estimates for DBEs for ADOT FTA-Funded Contracts**

	2015 Disparity Study	2017 Availability Study	2020 Disparity Study
FTA	7.25 %	2.79 %	14.64 %

Note: Results include potential DBEs.

Source: Keen Independent Research 2017 ADOT Availability Study;  
Keen Independent Research 2020 ADOT Disparity Study.

## 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 FTA-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.<sup>7</sup>

Taking into account relevant information from the 2020 Disparity Study, ADOT considered each of the factors listed above in determining whether or not to adjust the base figure.

**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 Payments Reported in ADOT Uniform Reports to FTA. Based on payments data from ADOT Uniform Reports of DBE Awards or Commitments and Payments reported to FTA, the median DBE participation from FFY 2015 through FFY 2019 was 29.25%. This value suggests a possible upward step 2 adjustment based on this factor. These results are presented in Figure 6 on the following page.

DBE Participation Based on Commitments/Awards Reported in ADOT Uniform Reports to FTA. The study team also calculated median DBE participation based on commitment/award data from ADOT Uniform Reports. Based on award information, ADOT’s median past DBE participation for FFY 2015 through FFY 2019 is 27.61%, a value which suggests a possible upward step 2 adjustment based on this factor.

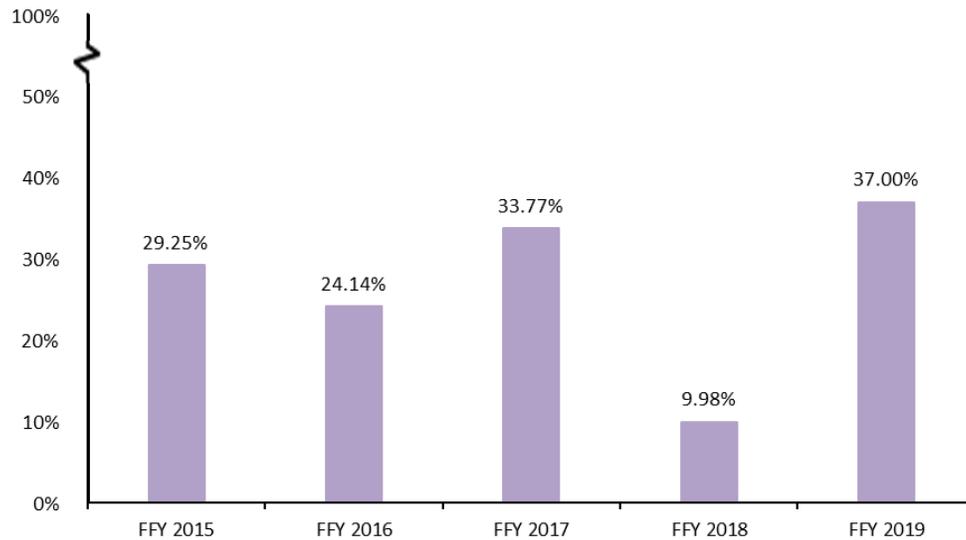
DBE Participation Based on Keen Independent Utilization Analysis for FTA-Funded Contracts. Based on Keen Independent analysis of DBEs on contracts during the study period, the median DBE participation from October 2013 through September 2018 was 24.38%. This value also suggests a possible upward step 2 adjustment based on this factor.

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<sup>7</sup> 49 CFR Section 26.45.

Examining total participation for FFY 2014 through FFY 2018, DBEs received 22.9% of FTA-funded contract dollars.

**Figure 6. DBE Participation on FTA-Funded Contracts Based on ADOT Uniform Reports to FTA, Fiscal Years 2015 through 2019**



Source: ADOT Uniform Reports of DBE Award or Commitments and Payments.

**2. Information Related to Employment, Self-Employment, Education, Training and Unions.** Chapter 4 of the 2020 Disparity Study report 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. Keen Independent’s analyses indicate 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 below.

In the 2020 Disparity Study, 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 report provides detailed results of the business ownership regression analyses).<sup>8</sup>

- Those analyses revealed that African Americans, Asian Americans, Native Americans and white women working in construction were less likely than nonminorities and white men to own construction businesses, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.
- In addition, there were statistically significant disparities in firm ownership for other minorities and white women in the Arizona engineering industry.
- Keen Independent did not perform business ownership regression models for the goods and other services industries.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if African Americans, Asian Americans, Native Americans, white women and other minorities owned businesses at the same rate as similarly situated nonminorities 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.

As the explanation of these calculations is somewhat complex, ADOT provides Figure 7 on the following page to document how the upward adjustment was determined. A detailed explanation of each portion of the calculation follows the figure.

Figure 7 calculates the impact on overall MBE/WBE availability, resulting in a possible upward adjustment of the base figure to 17.06%. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FTA-funded construction and engineering prime contracts and subcontracts that ADOT and local agencies awarded from October 2013 through September 2018). Calculations are explained on the following page.

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<sup>8</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 7. Potential Step 2 Adjustment to ADOT’s Overall DBE Goal for FTA-Funded Contracts Considering Disparities in the Rates of Business Ownership**

Current and potential DBEs	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of overall DBE availability**
<b>Construction</b>					
African American	3.45 %	61	5.66 %	4.82 %	
Asian American	1.90	65	2.92	2.49	
Native American	7.35	36	20.42	17.40	
Other minorities	4.90	n/a	4.90	4.17	
White women	<u>2.39</u>	69	<u>3.46</u>	<u>2.95</u>	
Minorities and women	19.99 %	n/a	37.36 %	31.83 %	2.27 %
All other businesses	<u>80.01</u>	n/a	<u>80.01</u>	<u>68.17</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>117.37 %</b>	<b>100.00 %</b>	
<b>Engineering and other subindustries</b>					
Hispanic American	4.80 %	n/a	4.80 %	3.70 %	
Other minorities	12.28	37	33.19	25.56	
White women	<u>18.18</u>	67	<u>27.13</u>	<u>20.89</u>	
Minorities and women	35.26 %	n/a	65.12 %	50.15 %	5.30 %
All other businesses	<u>64.74</u>	n/a	<u>64.74</u>	<u>49.85</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>129.86 %</b>	<b>100.00 %</b>	
<b>Goods and services</b>					
Hispanic American	1.14 %	n/a	1.14 %	1.14 %	
Other minorities	0.67	n/a	0.67	0.67	
White women	<u>9.73</u>	n/a	<u>9.73</u>	<u>9.73</u>	
Minorities and women	11.54 %	n/a	11.54 %	11.54 %	9.50 %
All other businesses	<u>88.46</u>	n/a	<u>88.46</u>	<u>88.46</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>100.00 %</b>	<b>100.00 %</b>	
<b>Total for current and potential DBEs</b>	<b>14.64 %</b>	n/a	n/a		<b>17.06 %</b>
<b>Difference from base figure</b>					<b>2.42 %</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 goal were calculated as the value after adjustment and scaling to 100%, multiplied by the percentage of total FTA-funded contract dollars in each industry (construction = 7.1%, engineering = 10.6%, goods and other services = 82.3%).

Source: Keen Independent Research 2020 Disparity Study (Chapter 11, page 5).

The study team completed these “but for” analyses separately for construction, engineering and goods and other services contracts and then weighted the results based on the proportion of FTA-funded contract dollars that ADOT awarded for October 2013 through September 2018 (i.e., a 7.1% weight for construction, a 10.6% weight for engineering and an 82.3% weight for goods and other services). The rows and columns of Figure 7 present the following information from Keen Independent’s “but for” analyses.

1. Current Availability. Column (a) presents the current availability of DBEs by group for construction, engineering and good and other services. Each row presents the percentage availability for minority- and women-owned DBEs. The current combined availability of DBEs for ADOT FTA-funded transportation contracts for October 2013 through September 2018 is 14.64%, as shown in the bottom row of column (a).

2. Disparity Indices for Business Ownership. As presented in Appendix F of the 2020 Disparity Study report, African Americans, Asian Americans, Native Americans and white women were less likely to own construction firms than similarly situated nonminorities and white men. This difference was statistically significant for each of those groups.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as nonminorities 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 7 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), Asian Americans own construction businesses at 65% of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F of the 2020 Disparity Study report 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% 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 Asian Americans shown for construction was calculated in the following way:  $(2.92\% \div 117.37\%) \times 100 = 2.49\%$ .
5. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 7 shows the components of the total base figure attributed to the adjusted MBE and WBE availability for construction, engineering and goods and other services. The study team calculated each component by taking the total availability estimate shown in column (d) for construction, for engineering and for goods and other services — and multiplying it by the proportion of total FTA-funded contract dollars in each industry (i.e., 7.1% for construction, 10.6% for engineering and 82.3% for goods and other services). For example, the study team used the 31.83% shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 7.1% for a result of 2.27%. A similar weighting of MBE/WBE availability for engineering/other subindustries produced a value of 5.30%, and weighting for goods and other services resulted in a value of 9.50%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 17.06% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the "but for" MBE/WBE availability (17.06%) and the current availability (14.64%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 2.42 percentage points  $(17.06\% - 14.64\% = 2.42\%)$ .

**3. Any Disparities in the Ability of DBEs to Get Financing, Bonding and Insurance.** Analysis of access to financing and bonding in the 2020 Disparity Study 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 2020 Disparity Study.

There was also evidence in the 2020 Disparity Study 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. Additionally, MBEs and WBEs were somewhat more likely to report that insurance requirements on contracts were a barrier to bidding.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT's overall annual goal for DBE participation in FTA-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>9</sup>

Among the "other factors" ADOT examined was the information in the 2020 Disparity Study about the comparative success of MBE/WBEs and majority-owned businesses in the Arizona marketplace. There was 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. There was 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 affected minority- and women-owned firms in the Arizona transportation contracting industry.

There is no straightforward way to project the number of MBE/WBEs available for ADOT work but for the effects of these other factors.

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<sup>9</sup> 49 CFR Section 26.45.

**Summary of Approaches for Making Step 2 Adjustments.** Quantification of potential step 2 adjustments is summarized 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 an upward step 2 adjustment if ADOT analyzed its estimates of past DBE participation (based on payments) — for recent years, the median DBE participation on FTA-funded contracts based on payments was 29.25% (from Figure 6).

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 14.64% base figure (calculated in Chapter 5 of the 2020 Disparity Study) and 29.25% DBE participation is 14.61 percentage points (29.25% - 14.64% = 14.61%). One-half of this difference is an upward adjustment of 7.31 percentage points (14.61% ÷ 2 = 7.31%). The goal would then be calculated as follows: 14.64% + 7.31% = 21.95%. (These calculations are presented in Figure 8.)

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 2.42 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If ADOT made this adjustment, the overall DBE goal for FTA-funded contracts would be 17.06% (14.64% + 2.42% = 17.06%). Figure 8 summarizes these calculations.

**Figure 8. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-Funded Contracts, FFY 2022–FFY 2024**

Step 2 adjustment component	Value	Explanation
<b>Potential upward adjustment for demonstrated capacity</b>		
Evidence of current capacity	29.25 %	Past DBE participation (Uniform DBE reports)
Base figure	- 14.64	From base figure analysis
Difference	14.61 %	
	÷ 2	Reduce by one-half
Adjustment	7.31 %	Upward adjustment for current capacity
Base figure	14.64 %	From base figure analysis
Adjustment for current capacity	+ 7.31	Upward step 2 adjustment
<b>Overall DBE goal</b>	<b>21.95 %</b>	Upward adjustment for demonstrated capacity
<b>Potential upward adjustment for disparity in business ownership</b>		
Base figure	14.64 %	From base figure analysis
Adjustment for "but for" factors	+ 2.42	"But for" step 2 adjustment for business ownership
<b>Overall DBE goal</b>	<b>17.06 %</b>	Upward adjustment for disparity in business ownership
<b>Potential upward adjustment for demonstrated capacity and disparity in business ownership</b>		
Base figure	14.64 %	From base figure analysis
Adjustment for current capacity	+ 7.31	Adjustment for current capacity
Adjustment for "but for" factors	+ 2.42	"But for" step 2 adjustment for business ownership
<b>Overall DBE goal</b>	<b>24.37 %</b>	Total upward adjustment

Source: Keen Independent Research 2020 Disparity Study (Chapter 11, page 7).

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 might be appropriate. However, impact of these factors on availability could not be quantified in the 2020 Disparity Study.

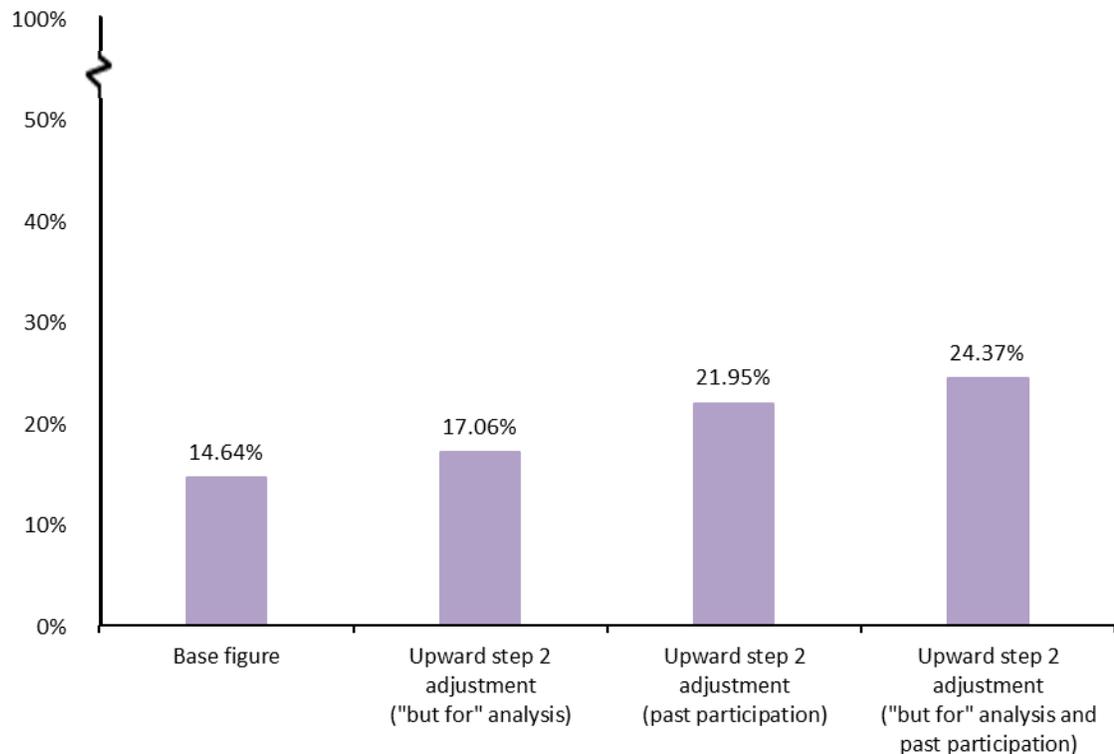
4. Other Factors. Impact of the barriers to success of MBE/WBEs in Arizona could not be quantified in the 2020 Disparity Study. However, evidence supports an upward adjustment.

Summary. ADOT considered whether or not to make a step 2 adjustment when determining its overall DBE goal.

- Adjustment for past DBE participation. If ADOT makes an upward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FTA-funded contracts would be 21.95%.
- Adjustment for disparity in business ownership. If ADOT instead makes an upward adjustment based on estimated MBE/WBE availability but for the effects of race- and gender-based discrimination, its DBE goal would be 17.06%.
- Combined step 2 adjustment. ADOT also considered adjusting the base figure using both demonstrated DBE capacity and disparity in business ownership. The overall DBE goal would then be 24.37%, calculated as follows:  $14.64\% + 7.31\% + 2.42\% = 24.37\%$ . These calculations are presented in the bottom portion of Figure 8 on the previous page.

Figure 9 presents a summary of potential step 2 adjustments which ADOT considered.

**Figure 9. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-Funded Contracts**



Source: Keen Independent Research 2020 Disparity Study (Chapter 11, page 9).

**Adjustments Summary.** For FTA-funded contracts from FFY 2022 through FFY 2024, ADOT proposes utilizing the base figure, for an overall DBE goal of 14.64%. This goal would be more than 3 percentage points higher than its current goal of 11.00 percent for FTA-funded contracts.

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

To comply with the Federal DBE Program, ADOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.<sup>10</sup> Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. ADOT has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, ADOT has projected the portion of its overall DBE goals that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any). During the previous goal period ADOT operated an entirely race-neutral DBE program for its FTA-funded contracts.

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral, and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.<sup>11</sup>
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.<sup>12</sup>

Based on 49 CFR Part 26 and the resources above, ADOT considered the following questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency’s past experience in meeting its overall DBE goal?
3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?<sup>13</sup>
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?

The balance of this section is organized around each of those general areas of questions.

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<sup>10</sup> 49 CFR Section 26.51.

<sup>11</sup> See <http://www.dotcr.ost.dot.gov/Documents/Dbc/49CFRPART26.doc>

<sup>12</sup> 49 CFR Section 26.51.

<sup>13</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.

**1. Is There Evidence Of Discrimination Within the Local Transportation Contracting Marketplace for Any Racial, Ethnic or Gender Groups?** The 2020 Disparity Study provides results of the local marketplace research (summarized in Chapter 4) and analyses of MBE/WBE utilization and availability (see Chapters 5 and 6). This information is also summarized below.

Marketplace Conditions. As discussed in Chapter 4 of the 2020 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. Full results are presented in Chapter 4 and Appendices E through J of the 2020 Disparity Study.

Results of the Disparity Analysis for FTA-Funded Contracts. Chapter 6 of the 2020 Disparity Study report examines utilization and availability of minority- and women-owned firms in ADOT's FTA-funded contracts. About 30% of FTA-funded contract dollars went to minority- and women-owned firms combined, which was somewhat above the 23% that might be expected based on the availability analysis for these contracts. Much of the utilization of MBEs and WBEs came from firms that appear that they could be certified as DBEs.

Utilization of white women-owned firms (25.1%) exceeded what might be expected from the availability analysis (12.0%).

Utilization of MBEs (4.5%) was substantially below what might be expected based on availability for this work (10.8%). There were substantial disparities between utilization and availability for each MBE group.

Summary. ADOT reviewed the information about marketplace conditions presented in Chapter 4 and Appendices E through J of the 2020 Disparity Study, as well as other information it has, when considering the extent to which it can meet its overall DBE goal through neutral measures. The combined information from the marketplace analyses indicates evidence of unequal outcomes for minority- and women-owned firms. The disparity analysis for FTA-funded contracts shows relatively high overall utilization of minority- and women-owned firms (30%) but disparities between the utilization and availability of MBEs.

**2. What has Been the Agency's Past Experience in Meeting its Overall DBE Goal?** Keen Independent analyzed ADOT's Uniform Reports DBE Commitments/Awards and Payments to FTA for the most recent five completed fiscal years. As presented in the far-right column of Figure 10 on the following page, based on payments to DBEs, ADOT met its overall DBE goal in each of the five fiscal years examined.

ADOT also reported certified DBE participation based on DBE commitments/awards on FTA-funded contracts, as summarized in Figure 10. As shown, reported DBE participation based on DBE commitments/awards on FTA-funded contracts exceeded the DBE goal in each of the past five fiscal years.

**Figure 10. ADOT Overall DBE Goal and Reported DBE Participation on FTA-Funded Contracts, FFY 2015 through FFY 2019**

Federal fiscal year	DBE goal	DBE commitments/awards	DBE payments	Difference from DBE goal	
				Awards	Payments
2015	7.25 %	76.62 %	29.25 %	69.37 %	22.00 %
2016	7.25	19.21	24.14	11.96	16.89
2017	7.25	16.40	33.77	9.15	26.52
2018	7.25	32.12	9.98	24.87	2.73
2019	11.00	27.61	37.00	16.61	26.00

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)?** For each of the fiscal years in the previous goal period, all DBE participation for FTA-funded contracts has been achieved without the application of DBE contract goals or other race-conscious programs.

As presented in Chapter 6 of the 2020 Disparity Study report, Keen Independent utilization analysis of FTA-funded contracts during the study period indicates that MBE/WBEs received about 30 percent of contract dollars from October 2013 through September 2018. The study team found that many of the MBE/WBEs receiving contract dollars could potentially meet criteria to be certified as DBEs but were not certified during the study period. The 30 percent MBE/WBE participation figure indicates that if ADOT were to encourage these firms to become certified, the agency might project that it can meet a goal of 14.64% without the use of DBE contract goals.

**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 Upcoming Fiscal Years?** 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. Keen Independent’s analysis of neutral remedies in Chapter 7 of the 2020 Disparity Study indicates that ADOT has implemented an extensive set of neutral measures. ADOT is continuing to examine additional neutral measures. One of these measures might be setting small business contract goals for certain FTA-funded contracts with subcontract opportunities.

**Summary.** ADOT proposes that it will attempt to achieve 100% of its overall DBE goal through neutral means.

- ADOT has extensive neutral measures in place, and there are many small business assistance programs offered by other institutions in the state. There are additional neutral measures ADOT might consider, including small business contract goals.
- DBE utilization was approximately 23% for FTA-funded contracts during the FFY 2014 through FFY 2018 study period.
- Further analyses indicated that many of the MBEs and WBEs that received FTA-funded contract dollars that are not DBE-certified could be if they applied. This alone would increase reported DBE participation.

ADOT projected it would meet all of its overall goal through neutral measures when it prepared its overall DBE goal of 11.00% for FFY 2019 through FFY 2021. The first column of Figure 11 presents these recent projections.

The second column of Figure 11 shows an overall DBE goal of 14.64% for FTA-funded contracts for FFY 2022 through FFY 2024 and a projection that all of it would be met through neutral means. This proposed level of overall DBE goal is consistent with the base figure calculated in the 2020 Disparity Study.

**Figure 11. Current ADOT Overall DBE Goal and Projections of Race-Neutral Participation for FTA-Funded contracts for FFY 2022 through FFY 2024**

Component of overall DBE goal	FFY 2019- FFY 2021	FFY 2022- FFY 2024
Overall goal	11.00 %	14.64 %
Neutral projection	- <u>11.00</u>	- <u>14.64</u>
Race-conscious projection	0.00 %	0.00 %

Source: Keen Independent Research 2020 Disparity Study (Chapter 11, page 12).

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

As it did with the 2014 Availability Study, the 2015 Disparity Study and the 2017 Availability Study, ADOT will publish the overall DBE goal and the draft 2020 Disparity Study report for public comment before submitting final versions of these documents to FTA. Public comments concerning information in this report as well as ADOT’s proposed overall DBE goal can be made through June 12, 2020.

The public was encouraged to comment on the size of the proposed overall DBE goals, the methodology used to develop the goals, the results of the 2020 Disparity Study, as well as suggestions on how to improve contracting opportunities for DBEs and other small businesses, including what ADOT and the industry could do to enhance support of the Federal DBE Program.

ADOT will hold two webinars concerning the Disparity Study and ADOT’s proposed DBE goals:

- Tuesday, May 12, 2020 from 1:00 to 2:30 pm; and
- Monday, May 18, 2020 from 4:00 to 5:30 pm.

Information about the webinars was available at [www.azdot.gov/DBEDisparityStudy](http://www.azdot.gov/DBEDisparityStudy). In addition, the public was able to submit feedback and provide written comments through the following means:

- (a) During the webinars;
- (b) Online at the above web address;
- (c) By calling the study telephone hotline at 602-730-0466;
- (d) Via email at [adotdisparitystudy2019@keenindependent.com](mailto:adotdisparitystudy2019@keenindependent.com); and
- (e) By regular mail sent to Keen Independent Research LLC, 701 N. 1st St., 2nd Floor, Phoenix, AZ 85004.

After distribution of the draft report and proposed overall DBE goals, 18 individuals submitted comments on behalf of themselves or their organizations during the comment period. Section G in Appendix J of the 2020 Disparity Study summarizes the comments. These and other comments received during the webinars and through other communications were reviewed and incorporated into the Disparity Study final report. ADOT also reviewed this additional information before formally submitting its proposed overall DBE goal calculation to FTA.