

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION
TO FTA FOR FEDERAL FISCAL YEARS 2022 THROUGH 2024
OCTOBER 2021

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 13.15% 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.

Lack of Projections of FTA-funded Contracts. At this time, ADOT does not have a comprehensive projection of individual contracts from October 2021 through September 2024 that will be funded using FTA dollars.

Estimation of Future FTA-funded Contracts based on Past Contracts. ADOT developed comprehensive information about FTA-funded contracts for October 2013 through September 2018 from the 2020 Disparity Study. 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. On an annualized basis, these past contracts are the best indication of future FTA-funded contracts for FFY 2022 through FFY 2024. (Note that subcontracts comprise a small share of total dollars, which reflects the limited opportunity to unbundle work under these types of contracts.)

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.

This section explains how the relative availability of 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 13 types of work that accounted for 97% of FTA-funded contract dollars. The availability analysis focuses on firms performing these 13 types of work.

As shown in Figure 1, bus and other motor vehicle transit systems account for approximately 61.1% of the contract dollars studied, and petroleum bulk stations and terminals account for an additional 13.7% of the dollars analyzed.

Figure 1. ADOT FTA-funded Transportation Prime Contracts and Subcontract Dollars by Type of Work, October 2013 -September 2018

NAICS	NAICS description	Dollars (1,000s)	Percent of dollars
485113	Bus and other motor vehicle transit systems	\$ 18,689	61.1 %
424710	Petroleum bulk stations and terminals	4,203	13.7
	Process, physical distribution, and logistics		
541614	consulting services	1,151	3.8
541330	Engineering services	790	2.6
484110	General freight trucking, local	649	2.1
238990	All other specialty trade contractors	289	0.9
238120	Structural steel and precast concrete contractors	284	0.9
238110	Poured concrete foundation and structure contractors	140	0.5
236220	Commercial and institutional building construction	60	0.2
238210	Electrical contractors	29	0.1
238990	All other specialty trade contractors	788	2.6
541690	Other scientific and technical consulting services	1,228	4.0
423990	Other miscellaneous durable goods merchant wholesalers	2,281	7.5
		\$ 30,581	100.0 %

Note: Numbers rounded to nearest tenth of 1%.

Source: Keen Independent Research 2020 Disparity Study.

DBE Availability. 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 the following sources:

- 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 contained 996 businesses, of which 137 (about 13.8%) were DBEs. (Each firm in the final availability database expressed qualifications and interest in ADOT and/or local public agency work.) The 2020 Disparity Study report explains the survey methodology in detail.

Figure 2. Availability “Head Count” of Businesses Included in 2020 Disparity Study

Race/ethnicity and gender	Number of firms	Percent of firms
DBEs	137	13.8 %
Non-DBEs	859	86.2
Total	996	100.0 %

Source: Keen Independent Research 2020 Disparity Study.

Relative Availability of DBEs. Keen Independent identified the number of DBEs available for each of the NAICS codes shown in Figure 1. (Firms could indicate qualifications for more than one type of work.) Figure 3 provides these results.

- The first column of data in Figure 3 presents the numbers of DBEs businesses in the final availability database.
- After dividing the number of DBEs by total firms (column 2 of data), Figure 3 indicates the percentage of firms in each subindustry that are DBEs (column 3).

DBE availability was as low as 8% for some NAICS codes and exceeded 27% for other NAICS codes.

Figure 3. Number of DBEs and Total Businesses Included in the Availability Analysis for Selected NAICS Codes

NAICS	NAICS description	DBE firms	Total firms	Percent of total firms
485113	Bus and other motor vehicle transit systems	6	51	11.8 %
424710	Petroleum bulk stations and terminals	2	17	11.8
541614	Process, physical distribution, and logistics consulting services	13	71	18.3
541330	Engineering services	34	218	15.6
484110	General freight trucking, local	17	201	8.5
238990	All other specialty trade contractors	18	112	16.1
238120	Structural steel and precast concrete contractors	19	91	20.9
238110	Poured concrete foundation and structure contractors	17	114	14.9
236220	Commercial and institutional building construction	40	224	17.9
238210	Electrical contractors	13	137	9.5
238990	All other specialty trade contractors	11	51	21.6
541690	Other scientific and technical consulting services	14	51	27.5
423990	Other miscellaneous durable goods merchant wholesalers	15	117	12.8

Note: Some firms in the final availability database expressed qualifications for more than one type of work.

Source: Keen Independent Research using 2020 Disparity Study results.

Dollar-Weighted Availability. To calculate a base figure for the overall DBE goal, Keen Independent dollar-weighted the availability results for each NAICS code shown in Figure 3. This approach is consistent with USDOT’s “Wherever possible, use weighting” instructions concerning Step 1 calculations in “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

Weights for each NAICS code reflect the percentage of total dollars of FTA-funded contracts in that NAICS code. The second column of data in Figure 4 shows those weights. The first column of data in Figure 4 shows the share of total firms in each NAICS codes that are DBEs. Multiplying these two numbers together the dollar-weighted values in the third column of data in Figure 4.

Base Figure. Keen Independent summed the weighted availability values for all NAICS codes studied (third column of data in Figure 4). This sum, 13.15%, is the base figure for ADOT’s DBE goal for FTA-funded contracts.

Dollar-weighted availability is more precise than a simple “head count” of businesses because it considers the specific type of work performed and the total dollars of spending for firms with those specializations.

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

NAICS	NAICS description	Percent of contract dollars	DBEs (percent of firms in worktype)	Weighted availability percent
485113	Bus and other motor vehicle transit systems	61.1 %	11.8 %	7.19 %
424710	Petroleum bulk stations and terminals	13.7	11.8	1.62
541614	Process, physical distribution, and logistics consulting services	3.8	18.3	0.69
541330	Engineering services	2.6	15.6	0.40
484110	General freight trucking, local	2.1	8.5	0.18
238990	All other specialty trade contractors	0.9	16.1	0.15
238120	Structural steel and precast concrete contractors	0.9	20.9	0.19
238110	Poured concrete foundation and structure contractors	0.5	14.9	0.07
236220	Commercial and institutional building construction	0.2	17.9	0.04
238210	Electrical contractors	0.1	9.5	0.01
238990	All other specialty trade contractors	2.6	21.6	0.56
541690	Other scientific and technical consulting	4.0	27.5	1.10
423990	Other miscellaneous durable goods merchant wholesalers	7.5	12.8	0.96
		100.0 %		13.15 %

Source: Keen Independent Research using 2020 Disparity Study results.

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.¹

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 (the percentage of contract dollars going to DBEs).

Based on payments data from ADOT Uniform Reports of DBE Awards or Commitments and Payments reported to FTA, the median DBE participation from FFY 2018 through FFY 2020 was 27.25%. This value suggests a possible upward step 2 adjustment based on this factor. These results are presented in Figure 5.

The study team also calculated median DBE participation based on commitment/award data from ADOT Uniform Reports (median past DBE participation for FFY 2018 through FFY 2020 of 32.12%).

The potential step 2 adjustment is calculated based on payments data as these results may be more indicative of actual DBE utilization for these contracts.

Figure 5. DBE Participation on FTA-Funded Contracts Based on ADOT Uniform Reports to FTA, based on Payments on Completed Contracts Fiscal Years 2015 through 2020



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

¹ 49 CFR Section 26.45.

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).²

- Those analyses revealed that African Americans, Asian 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 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.
- Due to data limitations, 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 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.

As the explanation of these calculations is somewhat complex, ADOT provides Figure 6 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 6 calculates the impact on overall MBE/WBE availability, resulting in a possible upward adjustment of the base figure to 14.39%. 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.

² The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

Figure 6. Potential Step 2 Adjustment to ADOT’s Overall DBE Goal for FTA-funded Contracts Considering Disparities in the Rates of Business Ownership

	a. Weighted DBE Availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of overall DBE availability**
Current DBEs					
Construction					
African American	1.37 %	61	2.25 %	2.14 %	
Asian American	0.62	65	0.96	0.91	
Native American	1.32	36	3.66	3.48	
Other minorities	9.21	n/a	9.21	8.75	
White women	3.73	69	5.40	5.13	
Minorities and women	16.26 %	n/a	21.49 %	20.42 %	1.46 %
All other businesses	83.74	n/a	83.74	79.58	
Total firms	100.00 %	n/a	105.23 %	100.00 %	
Engineering and other subindustries					
Hispanic American	5.62 %	n/a	5.62 %	4.99 %	
Other minorities	4.22	37	11.41	10.12	
White women	11.27	67	16.82	14.92	
Minorities and women	21.11 %	n/a	33.85 %	30.02 %	3.17 %
All other businesses	78.89	n/a	78.89	69.98	
Total firms	100.00 %	n/a	112.74 %	100.00 %	
Goods and services					
Hispanic American	1.53 %	n/a	1.53 %	1.53 %	
Other minorities	1.77	n/a	1.77	1.77	
White women	8.56	n/a	8.56	8.56	
Minorities and women	11.86 %	n/a	11.86 %	11.86 %	9.76 %
All other businesses	88.14	n/a	88.14	88.14	
Total firms	100.00 %	n/a	100.00 %	100.00 %	
Total for DBEs	13.15 %	n/a	n/a		14.39 %
Difference from base figure					1.24 %

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 using 2020 Disparity Study results.

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 6 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 13.15%, 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 non-minorities 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 non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), 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: $(0.96\% \div 105.23\%) \times 100 = 0.91\%$.
5. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 6 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 20.42% shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 7.1% for a result of 1.46%. A similar weighting of MBE/WBE availability for engineering/other subindustries produced a value of 3.17%, and weighting for goods and other services resulted in a value of 9.76%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 14.39% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the "but for" MBE/WBE availability (14.39%) and the current availability (13.15%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 1.24 percentage points (14.39% - 13.15% = 1.24%).

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.³

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.

³ 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 27.25% (from Figure 5).

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 13.15% base figure and 27.25% DBE participation is 14.10 percentage points (27.25% - 13.15% = 14.10%). One-half of this difference is an upward adjustment of 7.05 percentage points (14.10% ÷ 2 = 7.05%). The goal would then be calculated as follows: 13.15% + 7.05% = 20.20%. (These calculations are presented in Figure 7.)

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 1.24 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 14.39% (13.15% + 1.24% = 14.39%). Figure 7 summarizes these calculations.

Figure 7. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-funded Contracts, FFY 2022–FFY 2024

Step 2 adjustment component	Value	Explanation
Potential upward adjustment for demonstrated capacity		
Evidence of current capacity	27.25 %	Past DBE participation (Uniform DBE reports)
Base figure	- 13.15	From base figure analysis
Difference	14.10 %	
	÷ 2	Reduce by one-half
Adjustment	7.05 %	Upward adjustment for current capacity
Base figure	13.15 %	From base figure analysis
Adjustment for current capacity	+ 7.05	Upward step 2 adjustment
Overall DBE goal	20.20 %	Upward adjustment for demonstrated capacity
Potential upward adjustment for disparity in business ownership		
Base figure	13.15 %	From base figure analysis
Adjustment for "but for" factors	+ 1.24	"But for" step 2 adjustment for business ownership
Overall DBE goal	14.39 %	Upward adjustment for disparity in business ownership
Potential upward adjustment for demonstrated capacity and disparity in business ownership		
Base figure	13.15 %	From base figure analysis
Adjustment for current capacity	+ 7.05	Adjustment for current capacity
Adjustment for "but for" factors	+ 1.24	"But for" step 2 adjustment for business ownership
Overall DBE goal	21.44 %	Total upward adjustment

Source: Keen Independent Research using 2020 Disparity Study results.

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.

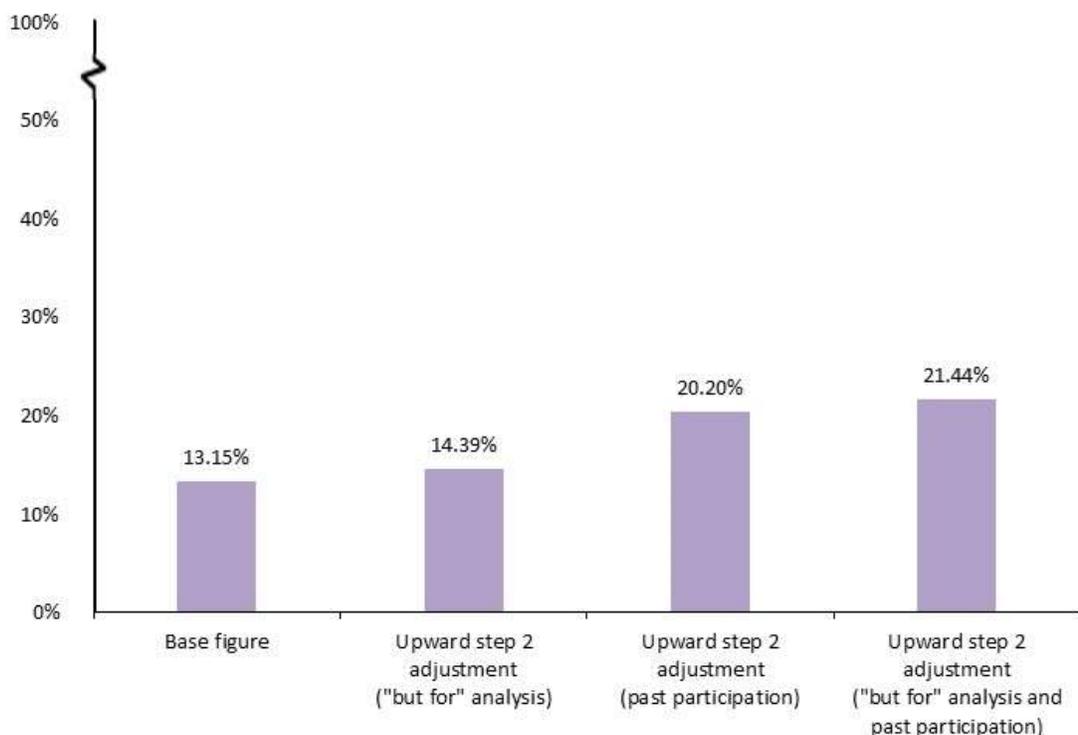
4. Other Factors. Impact of the barriers to success of MBE/WBEs in Arizona could not be quantified in the 2020 Disparity Study. However, evidence supports an upward adjustment.

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 20.20%.
- 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 14.39%.
- 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 21.44%, calculated as follows: $13.15\% + 7.05\% + 1.24\% = 21.44\%$. These calculations are presented in the bottom portion of Figure 7 on the previous page.

Figure 8 presents a summary of potential step 2 adjustments which ADOT considered.

Figure 8. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-funded Contracts



Source: Keen Independent Research using 2020 Disparity Study results.

Adjustments Summary. For FTA-funded contracts from FFY 2022 through FFY 2024, ADOT proposes utilizing the base figure, for an overall DBE goal of 13.15%. This goal would be more than 2 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.⁴ 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.⁵
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁶

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)?⁷
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.

⁴ 49 CFR Section 26.51.

⁵ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

⁶ 49 CFR Section 26.51.

⁷ 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 in the 2020 Disparity Study. 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 MBE/WBEs 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? Figure 9 shows results of ADOT’s Uniform Reports DBE Commitments/Awards and Payments to FTA for the most recent six completed fiscal years for which results have been reported. As presented in the far-right column of Figure 9 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 9. As shown, reported DBE participation based on DBE commitments/awards on FTA-funded contracts exceeded the DBE goal in each of the past six fiscal years.

Figure 9. 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
2020	11.00	35.71	27.25	24.71	16.25

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. In fact, DBE participation (based on payments) was lower than the proposed goal of 13.15% in only one of the last six federal fiscal years through FFY 2020 (see Figure 9).

As presented in Chapter 6 of the 2020 Disparity Study report, Keen Independent utilization analysis of FTA-funded contracts during the study period also reported relatively high utilization of MBE/WBEs. 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. If ADOT were to encourage these firms to become certified, a goal of 13.15% could be even more easily met.

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. 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 10 presents these recent projections.

The second column of Figure 10 shows an overall DBE goal of 13.15% 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 10. 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 %	13.15 %
Neutral projection	- <u>11.00</u>	- <u>13.15</u>
Race-conscious projection	0.00 %	0.00 %

Source: Keen Independent Research using 2020 Disparity Study results.

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 published its DBE Goal and Methodology for FHWA, FTA and FAA and the draft 2020 Disparity Study report for public comment on the ADOT’s official website on April 8, 2020, before preparing final versions of these documents. The public comment period for the draft report and proposed overall DBE goals remained open through June 30, 2020.

ADOT also held two webinars with industry associations, local public agencies and DBE and non-DBE contractors and consultants, and others 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.

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.

Information about the webinars was available at 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; 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. There were no changes to this goal document were needed based on the comments. A summary of the comments follows.

Input Received During the Public Comment Period

Comments were received by via email, website, telephone hotline and mail from April 15, 2020 through June 30, 2020. Through this comment period, 18 individuals submitted comments on behalf of themselves or their organizations. Most of the comments pertained to the DBE goals for FHWA, FTA and FAA as a group or the disparity study as a whole. Because of this potential breadth, Keen Independent provides examples of the full range of comments below.

Concern about the economy during and post-pandemic. A male representative of an out of state firm commented via email that since the study was conducted prior to COVID-19 outbreak, the study should examine the economy in the present and not be based on historical data. He added that the goals should be lowered “to reflect current and future market conditions”

Similar comments were submitted by a large trade association. These comments pointed out that study was data for a time period of favorable economic conditions and state revenues. “With lower revenues projected and portions of the 5-year program expected to be re-allocated from new construction/reconstruction to preservation and maintenance, plus factor in all the ambiguity surrounding the Coronavirus ... it is unrealistic for ADOT to increase the DBE goal at this time.”

A male representative of a majority-owned firm wrote, “ADOT stated that they are going to have a significant decrease in their 5-yr program (up to \$740M), which reduces revenue for all Engineering and Construction firms throughout AZ.” He asked, “Has this been taken into consideration since COVID-19?”

A female representative of an Arizona public entity inquired why Keen Independent Research did not interview Arizona businesses about the COVID-19 impact compared to 19 businesses selected in Oregon and Colorado. She was concerned about ADOT’s observation of negatively impacted construction projects due to COVID-19 and its response with measures to assist prime contractors struggling to meet DBE goals due to COVID-19 negative impacts.

Prequalification. A female representative of a construction-related firm stated that the study continues to characterize the prequalification process as a barrier. She noted that the industry requires primes to have licenses, bonding and insurance and that primes require the subs to have the same. However, “not all

subcontractors have to be ADOT prequalified, so the prequalification process does not prevent firms inexperienced with ADOT requirements to work on their [ADOT] projects.”

Monitoring, verification and “graduation.” Several individuals commented or asked questions about certification and program eligibilities.

- In an email, a male representative of a majority-owned firm asked who monitors SBE/DBE/MWBEs to determine if they are still qualified. He suggested that ADOT provide the procedures for reviews of the net worth of the participants and he remarked that it should be public knowledge. He also suggested that a “graduation” period be established for certified firms.
- By email, a female representative of a construction-related firm stated that decertified firms were “lightly mentioned” and questioned how the goal of the DBE is for the company to grow and eventually not require DBE status. She inquired whether the average number of DBE companies that become decertified are factored into the DBE goal.
- A male representative of a professional services firm commented that the study does not recommend a graduation period. He reported, “It is clear that very few firms graduate and the report does not cover this extremely important aspect of the program.”

Business assistance. A representative of a Native American business assistance association recommended that BECO provide “training for business owners ... to understand better processes to effectively bid and market their services”

Support for overall DBE goals. There were a number of comments indicating support for the DBE Program and/or the overall DBE goals. These include the following.

- A representative of a Native American business assistance association commented, “I am encouraged by ... the program and also the development of stronger goals by certified and qualified firms We will continue to support your efforts and also encourage our clients to complete the required documentation for certification....”
- A Hispanic American male representative of a minority trade association reported by email that the association closely monitors changes to programs impacting diversity in government contracting. He commented, “We are pleased to learn that utilization of M/WBEs is 18 percent or greater on ADOT contracts since 2013. While that is still significantly less than the availability of M/WBEs in the marketplace, we recognize that it is higher than the goals approved for FHWA, FTA and FAA projects in 2017. The fact that even on state projects with no federal funding, we see M/WBE utilization of 20 percent shows the progress and impact of the DBE program across the state.”
- A female representative of a small woman-owned firm, construction-related firm commented by email, that she “greatly benefits” from opportunities working on ADOT projects.
- Commenting by email, a Hispanic American female business representative of a DBE/SBE/SBA 8(a) construction-related firm commented, “... 12 percent ... I LOVE IT!”
- By email, a female representative of a construction-related firm reported her satisfaction with ADOT’s move towards double digit DBE utilization goals in all three modal areas. She stated that she understands that goals must be attainable, but utilization shows that Arizona contractors could reach DBE mark of 16.15 percent without a downward adjustment. She said, “It would require the industry to get comfortable with judgement calls on good faith efforts, for sure.” She added, “It would mean that project and agency goals run the risk of not being met as often.”

- A Hispanic American male representative of a minority trade association recommended by email, “... for the benefit of the minority and women construction and professional services firms available to perform ADOT work, we would prefer ADOT not take the Step 2 downward adjustment in its FHWA goal. After all, the purpose of the program is level the playing field, and aggressive goals encourage aggressive effort. Past utilization shows that a goal of 16.15 percent is attainable.”

He added, “We also ask ADOT’s leadership champion regulatory changes to allow for small contracting programs that encourage competition and participation by smaller firms by size of project. This would help to reduce the barrier that ADOT has created with its construction prequalification requirements. It would also increase the number of firms able to bid and participate as small prime contractors, adding to ADOT’s race neutral efforts to reduce disparity.”

Increased goals are not recommended by some interested parties. Some of the comments did not support higher overall DBE goals.

- A female public entity representative commented by study email, “Your results should show contribution for actual performance toward REDUCING the required goal, not increasing it.” She added that goals should be reduced “especially since we have exceeded goals every single year.”
- In a letter, a large trade association recommended maintaining the current overall DBE goal for FHWA-funded contracts rather than increasing it.

Qualification capability. A male representative of a professional services firm commented that ADOT does not qualify his company to bid on projects although they are HUBZone SB, certified by the SBA and have \$10–20 million FHWA and USACE projects in Arizona. He wants to know why ADOT does not qualify his business. He added, “Without small business set-aside projects similar to the FHWA, it will be difficult for ADOT to meet their goals especially if they will not qualify small businesses such as ours to bid on their projects.”

Methodology. By email, a male public comment participant offered suggestions on methodology. All of the issues were reviewed to confirm that they had already been addressed in the report.

Relationships. A female representative of a small business asked via email, “What do we do if we feel we are having difficulties on a local level and if we could get help [there] that we would thrive as business?” She added that it has “changed drastically over the years and it’s not the same.” She noted that they were able to speak with anyone about anything but that one-on-one relationship with vendors and subcontractors no longer exists.

SR202 South Mountain Project. A male representative of a majority-owned firm inquired why this project was not included in the study because many DBE/SBE/WMBE firms participated.

A male representative of a professional services firm commented that “it appears the numbers are skewed due to not including DBE use on the South Mountain Loop 202 project.”

Overconcentration. Several comments concerned potential overconcentration of DBEs.

- A male representative of a professional services firm reported that in the ADOT marketplace there is an overconcentration of DBE firms in landscaping, geotechnical and traffic control-related work.
- A large trade association indicated the potential for overconcentration as a concern.

Advertising method. A female representative of a small business requested that her company be placed on the Arizona bidding documents as a viable method to advertise for MBE/WBE/DVBE and other disadvantaged groups. She stated that they have been a “Trade” and “Focus” publication since 1996 when Affirmative Action was initiated. She said, “It’s a great way for contractors to interact.” She added that the DBE ads are free for everyone to look at and that they are only \$35 to place.

Wealth education. A female representative of a construction-related firm, by email, stated that more wealth education is needed for business owners as “the effects historic discrimination of lending practices, financial resources and costs of capital for minorities and women” have revealed. She said that this education will lead to increased bonding capacity and therefore, performance ability.

Comment about AZUTRACS. Via email, a female business owner reported that the effort to reform AZUTRACS paid off. She commented that it is easy to use and gives primes convenient access and user-friendly navigation tool to find DBEs. She appreciates the new functions for primes to advertise opportunities to DBEs, targeted by scope.

Business Coach on Demand. According to a female business owner, ADOT’s Business Coach on Demand is “a beacon through the jungle. It enables navigation of the system to get to the correct process or form needed. The solution is instantly findable instead of waiting for responding emails. Great help for primes and subs!”

Just One More. According to a female business owner, the Just One More campaign renewed awareness and encouragement to primes. It also raised the “Why? What is in it for me?” For the future to transcend to increased sustainable race-neutral participation, she said that the prime has to find a competitive advantage in including more DBE’s in the proposal. The inclusions now are based on fulfilling set goals and goodwill but they cost the prime money. “Increased administration — internally debundling scopes — increased performance risk! In the future we should work towards developing a tangible benefit to an inclusive prime in ADOT’s competitive evaluation process.”

Appreciation of ADOT leadership and staff. The Hispanic American male representative of a minority trade association commented by email, “We do recognize and appreciate the leadership that ADOT has taken to promote the inclusion of Arizona’s small business community on their projects”

A representative of a Native American business assistance association reported, “...having the opportunity to work with the absolutely exceptional staff at ADOT BECO ... we are grateful.”

Other comments about the DBE Program. Through an email, a male representative of a majority-owned firm commented that in his opinion, the DBE program is racist. He remarked, “Prove to me that this is not instilling equality throughout ALL firms.”

A minority female representative of a small business commented, by email, that minority women are “kept out of the federal and city contracts on every level of contracting.” She also commented that the study “is a good start” but that “there is no such thing as an even playing field.”

Additional trade association comments. In its comments, a large Arizona trade association reviewed efforts it has made to assist contractors throughout the state. It also provided industry comments about study methodology and ADOT’s operation of the program. As with any other comments about methodology, Keen Independent reviewed questions and comments about study approach and data to consider whether a change in approach was needed and to ensure that each major aspect of the methodology was explained in the report.

The trade association indicated that working on federally funded highway contracts is challenging and that neither the federal government nor state DOTs prepare a DBE for the complexities of these projects. The trade association also reported that DBEs are reporting capacity to ADOT but not bidding the work.

The trade association expressed concerns that COVID-19 has altered the operating environment for the construction industry and recommended retaining the current overall DBE goal for FHWA-funded contracts (9.55%) until the fallout of COVID-19 on small and disadvantaged construction companies can be determined. This trade association also reported that goals above 10 percent are very difficult to meet as resources like labor are limited for both primes and subs.