

## CHAPTER 9.

# Summary of Evidence from Marketplace and Disparity Analyses

The balance of the report presents information that will assist NDOT as it sets an overall DBE goal (Chapter 10), projects the maximum feasible portion of the overall DBE goal to be met through neutral means (Chapter 11) and designs components of its implementation of the program to follow federal regulations (Chapter 12). Before proceeding to these analyses, it is useful to summarize the information presented in earlier chapters concerning the marketplace and the disparity analyses for NDOT and LPA Program transportation contracts.

### A. Marketplace Analyses

**Quantitative information.** There is evidence of disparities in the Nevada marketplace for minorities and women, and minority- and women-owned firms, pertaining to:

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

The quantitative analysis of marketplace conditions identified some evidence of disparities for women and each minority group:

- African Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans;
- Hispanic Americans; and
- Native Americans.

Chapter 4 and Appendices E, F, G and H present further information.

**Qualitative information.** There is also qualitative evidence of discrimination against minority-owned businesses and women-owned businesses in the Nevada marketplace from in-depth interviews, availability interviews, a 2010 disparity study conducted in Las Vegas and other sources. This includes evidence of a “good ol’ boy” network in Nevada that appears to have a negative effect on opportunities for minority- and women-owned firms. As discussed in Chapter 4, the qualitative information is consistent with Keen Independent’s quantitative analyses of marketplace conditions in Nevada.

Analysis of marketplace conditions also suggests that the severe economic downturn in Nevada had more of a negative effect on minority- and women-owned firms than other businesses.

## B. Disparity Analyses for NDOT Contracts

Keen Independent examined NDOT and LPA Program transportation contracts from 2007 through June 2012. The study team separately analyzed non-goals contracts and contracts that had DBE contract goals applied, and contracts for 2007-2009 compared with 2010 through June 2012. Keen Independent examined additional subsets of contracts, including construction and engineering prime contracts, when exploring what might be contributing to overall disparity results.

The following summarizes disparity results by MBE group and for WBEs.

**African American-, Asian-Pacific American-, Subcontinent American- and Native American-owned firms.** Overall and across nearly each subset of NDOT and LPA Program transportation contracts examined in the study, utilization was substantially below availability for:

- African American-owned firms;
- Asian-Pacific American-owned firms;
- Subcontinent Asian American-owned firms; and
- Native American-owned firms.

Combined, firms owned by members of the four groups above received 0.1 percent of the total dollars on NDOT and LPA Program contracts. Combining availability results for the four groups, one might expect those firms to receive 3.8 percent of the contract dollars. The resulting disparity index was 3, where a value of 100 indicates “parity,” and a value of 80 indicates a “substantial disparity.”

**Hispanic American-owned firms.** Considering all NDOT and LPA Program transportation contracts examined, utilization of Hispanic American-owned firms (2.2%) was somewhat below what might be expected from the availability analysis (2.4%). This was not a substantial disparity (disparity index did not fall below 80).

However, there was a substantial disparity in the utilization of Hispanic American-owned firms for the most recent portion of the study period — 2010 through June 2012 — even with the DBE contract goals program in place for much of this time. Hispanic American-owned firms received 1.4 percent of contract dollars during these years, one-half of what might be expected from the availability analysis (disparity index of 50).

The economic downturn had a large negative effect on firms in the transportation contracting industry in Nevada, and there is evidence that MBEs and WBEs, on balance, were more affected than other firms. Although the relative number of Hispanic American-owned firms in the Nevada transportation contract industry did not decline between 2007 and 2013, their overall dollar-weighted availability for NDOT contracts did decrease (after considering the types, sizes, locations and timing of prime contracts and subcontracts).

NDOT should review all of the disparity results for Hispanic American-owned firms; the large disparities for Hispanic American-owned firms in the most recent time period may be important when determining whether Hispanic American-owned firms will be included in any future race-conscious programs.

**White women-owned firms.** Keen Independent now turns to the results for companies owned by non-Hispanic white women.<sup>1</sup>

**All NDOT and LPA Program contracts.** Utilization of white women-owned firms on NDOT and LPA Program contracts (2.9%) was more than twice as high as might be expected based on the availability of WBEs for that work. Utilization of WBEs was more than twice the WBE availability benchmark when considering the 2010 through June 2012 time period or just non-goals contracts for the study period. Although small, utilization of WBEs as prime contractors on NDOT and LPA Program construction contracts still exceeded WBE availability for that work.

**Engineering contracts.** There was one area of very large disparities for WBEs — NDOT and LPA Program engineering-related work. WBEs received only 0.1 percent of engineering contract dollars during the study period. The resulting disparity index was 9, far more severe than the “80” level that would indicate a substantial disparity.

There was also some qualitative information that indicated gender-based barriers could affect the success of women-owned firms when pursuing engineering-related work in Nevada and at NDOT.

## **C. Conclusions**

When determining how to operate the Federal DBE Program for the coming years, NDOT should examine quantitative and qualitative information for both the marketplace and NDOT and LPA Program transportation contracts. Some of this information is provided in this disparity study; NDOT should consider additional public input and other sources of information as well.

Based on the information in the disparity study, there appears to be:

- A continued need for NDOT efforts to open contracting opportunities to small businesses in general.
- Quantitative and qualitative evidence that minority-owned firms in the Nevada transportation contracting industry are at a disadvantage in the marketplace and when pursuing NDOT and LPA Program work. (This evidence includes disadvantages and disparities in NDOT contracting for each MBE group included in the Federal DBE Program.)
- Quantitative and qualitative evidence that white women-owned firms in the Nevada transportation contracting industry are at a disadvantage in the marketplace, and quantitative and qualitative evidence of gender-based disadvantages when pursuing NDOT and LPA Program engineering-related work. (There is no evidence of disparities for WBEs in general for NDOT and LPA Program transportation contracts, even when the DBE contract goals program was not in place.)

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<sup>1</sup> The disparity results for minority-owned firms summarized above include businesses owned by minority women, which are most relevant disparity results when determining inclusion of minority women in any future race- or gender-conscious programs.

NDOT should consider these results when determining DBE groups eligible for any future DBE contract goals program. If NDOT concludes that it should continue to operate a DBE contract goals program:

- With the narrow-tailoring requirements in the Ninth Circuit decisions, NDOT might consider requesting a waiver from FHWA that would allow it to only include minority-owned DBEs as eligible to meet DBE contract goals (to address utilization of WBEs on NDOT contracts that is more than twice WBE availability).
- Although there was no disparity in WBE utilization in NDOT contracts overall, NDOT faces the unique situation of nearly 0 percent utilization for white women-owned firms in its engineering-related contracts. It is recommended that NDOT consult with FHWA to identify an appropriate response in accordance with Federal DBE Program requirements and relevant court decisions.

Chapter 8 also identified some evidence of overconcentration of DBE participation in certain fields. NDOT should consider this information when monitoring future DBE utilization and when designing program elements, including any use of DBE contract goals.

NDOT should review these results and other information as it sets an overall DBE goal for the next three fiscal years, projects the portion of the goal to be met through neutral means, and determines how it will operate the Federal DBE Program during this period.