

# **Final Report**

For the project entitled:

## **Colorado Department of Transportation Statewide Transportation Disparity Study**

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**November 2009**

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## **EXECUTIVE SUMMARY**



## EXECUTIVE SUMMARY

D. Wilson Consulting Group conducted a study to determine whether a disparity exists for minority and women owned disadvantaged business enterprises (M/W/DBEs) working on Colorado Department of Transportation (CDOT) federally funded construction and design projects. A disparity exists when there are more available M/W/DBEs ready, willing and able to conduct work on CDOT projects than are utilized. The study included six years of procurement activity from January 2002 through December 2007.

## BACKGROUND

The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the standard of review for state and local governments that take race into account when awarding contracts. In *Croson*, the Court ruled that the strict scrutiny standard be applied to race-conscious programs. The strict scrutiny standard requires minority business programs to be predicated upon two factors.

First, an owner must establish a "compelling governmental interest", as evidenced by ongoing effects of past or present discrimination against minority-owned businesses. Second, race-conscious programs must be "narrowly tailored" to remedy the effects of such discrimination. In other words, programs must not be overly broad; rather, they should be narrowly designed to address the specific forms of discrimination identified by the agency. In addition to the narrow tailoring required by the courts, the federal DBE regulations have also been modified to assist recipients to narrowly tailor their DBE programs.

## SCOPE

- Legal analysis of relevant court decisions on M/W/DBE programs;
- Review of CDOT's contracting policies, procedures and practices;
- Analysis of construction and consulting contract data to determine M/W/DBE participation by work code in the relevant market area (state of Colorado) during the study period;
- Summary of anecdotal evidence regarding perceptions of both M/W/DBEs and non-M/W/DBEs; and
- Program recommendations.

## UTILIZATION DATA

### Construction Contracts

- Of the total dollars paid to Prime Contractors, M/W/DBE firms received 5.10 percent;
- Of the total dollars paid to Subcontractors, M/W/DBE firms received 11.48 percent;
- Of the total dollars paid to Prime and Subcontractors, M/W/DBE firms received 12.24 percent;
- M/W/DBE firms received 11.55 percent of contracts awarded with assigned DBE goals and 9.28 percent of contracts awarded that did not have an assigned DBE goal (2.99 percent of contracts were awarded without an assigned M/W/DBE goal); and
- 93.7 percent of subcontracts were for less than \$350,000 and M/W/DBE firms received 32 percent of those subcontracts.

### Consultant Contracts

- Of the total dollars paid to Prime Consultants, M/W/DBE firms received 16.73 percent;
- Of the total dollars paid to Subconsultant firms, M/W/DBE firms received 4.48 percent; and
- Regardless of the size of the subconsultant task order amounts, M/W/DBE firms received approximately 50 percent of those task order dollars.

## AVAILABILITY DATA

The available firms were established using a master database relying on the following sources:

- Colorado Department of Transportation Certified DBEs,
- Colorado Department of Transportation Bidders' Loop Vendors,
- Colorado Department of Transportation Prequalified Construction Vendors,
- Colorado Department of Transportation Prequalified Consultant Vendors,
- Colorado Contractors Association Vendor List,
- Dun and Bradstreet Colorado Firm Database (2008); and
- National Minority Suppliers Directory (Colorado Firms).

After the master database was compiled, the data was filtered to extract a subset of qualified, willing and able firms from the overall pool of firms. Key elements used to evaluate firm eligibility for further analysis included:

- Prequalification with CDOT for prime contractors;

- Willingness to work on CDOT projects;
- Firm capability based on available resources; and
- Past performance on similar size and type projects.

Based on the above analysis, 371 prime contractors, 2,866 subcontractors, 353 prime consultants, and 874 subconsultants were identified as available in the study. These firms represent the universe of all firms available to perform work for CDOT, regardless of race, ethnicity, or gender.

### DISPARITY ANALYSIS

Availability and utilization data were analyzed to determine if M/W/DBEs received a fair and equitable share of the subcontracting and sub-consulting dollars. A disparity analysis was conducted by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates parity, a balance between utilization and availability.

Courts have held that a disparity index of less than 80 indicates significant underutilization and that project specific DBE goals should only be used to address significant underutilization. The only category of M/W/DBEs that was determined to be not significantly underutilized was non-minority Women in construction subcontracting. All other M/W/DBEs were significantly underutilized in both construction and consultant services subcontracting. The following are the results for construction and consultant services subcontracts with CDOT for calendar years 2002 through 2007:

- Construction – **Table ES-1** shows that African American, Native American, Asian American, Hispanic American and Other M/W/DBE owned firms were significantly underutilized as subcontractors. Nonminority Women were underutilized as subcontractors, but not significantly.
- Consultant Services – **Table ES-2** shows that all M/W/DBE groups were significantly underutilized as subcontractors.



**Table ES-1  
Subcontractor Disparity Analysis  
Construction  
Calendar Years 2002 – 2007**

Ethnicity Classifications	# of Awarded Contracts <sup>1</sup>	Contract Dollars <sup>2</sup>	% of Dollars <sup>3</sup>	% of Firms Available <sup>4</sup>	Disparity Index <sup>5</sup>	Disparity Impact Under/Over Utilization
<b>OVERALL</b>						
African Americans	86	\$6,490,812	0.40%	2.13%	18.63	* Underutilization
Native Americans	37	\$3,790,385	0.23%	0.73%	31.74	* Underutilization
Asian Americans	68	\$3,422,701	0.21%	0.49%	42.70	* Underutilization
Hispanic Americans	428	\$55,620,757	3.40%	6.59%	51.59	* Underutilization
Nonminority Women	1,152	\$118,427,394	7.24%	7.92%	91.40	Underutilization
Other M/W/DBEs <sup>6</sup>	1	\$95,000	0.01%	4.43%	0.13	* Underutilization

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007

Note: Total dollars awarded may not equal the total due to rounding

<sup>1</sup> The number of contracts awarded to subcontractors

<sup>2</sup> The dollars awarded to subcontractors

<sup>3</sup> The percentage of dollars from the prime contractor utilization

<sup>4</sup> The percentage of available firms

<sup>5</sup> The disparity index is % utilization divided by % availability multiplied by 100

<sup>6</sup> The disparity index of less than 100 indicates underutilization or overutilization if greater than 100

<sup>6</sup> A non-M/W/DBE male

\* Significantly underutilized

**Table ES-2  
Sub-consultant Disparity Analysis  
Consultant Services  
Calendar Years 2002 – 2007**

Ethnicity Classifications	# of Awarded Contracts <sup>1</sup>	Contract Dollars <sup>2</sup>	% of Dollars <sup>3</sup>	% of Firms Available <sup>4</sup>	Disparity Index <sup>5</sup>	Disparity Impact Under/Over Utilization
<b>OVERALL</b>						
African Americans	4	\$116,048	0.02%	2.52%	0.88	* Underutilization
Native Americans	18	\$421,720	0.08%	1.83%	4.40	* Underutilization
Asian Americans	306	\$7,635,664	1.46%	4.35%	33.53	* Underutilization
Hispanic Americans	110	\$2,095,650	0.40%	6.64%	6.03	* Underutilization
Nonminority Women	496	\$13,208,443	2.52%	23.23%	10.86	* Underutilization

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007

Note: Total dollars awarded may not equal the total due to rounding

<sup>1</sup> The number of contracts awarded to subcontractors

<sup>2</sup> The dollars awarded to subcontractors

<sup>3</sup> The percentage of dollars from the prime contractor utilization

<sup>4</sup> The percentage of available firms

<sup>5</sup> The disparity index is % utilization divided by % availability multiplied by 100

<sup>6</sup> The disparity index of less than 100 indicates underutilization or overutilization if greater than 100

\* Significantly underutilized

## **ANECDOTAL ANALYSIS**

Courts have held that to have a race-based program an owner must have anecdotal evidence of discrimination to support statistical evidence of disparity. Several methods were utilized in the study to collect anecdotal data from individuals representing both M/W/DBE and non-M/W/DBE firms. The anecdotal data collected were a result of:

- Eighty-six personal interviews;
- Three public hearings;
- An online survey; and
- Four round table discussions with industry and M/W/DBE representatives.

In general, M/W/DBE firms feel that they still encounter obstacles and barriers to doing business with CDOT and CDOT prime contractors. In most cases, race/ethnicity and/or gender appear to be a factor, especially for African American firms. The anecdotal findings suggest that long held perceptions about M/W/DBE firms have improved but more work is needed to achieve long-term parity in contracting. A majority of M/W/DBE firms feel that without the DBE program, they would not have a chance to participate in CDOT contracts primarily because prime contractors would self-perform the work. The DBEs believe that the implementation of DBE goals on CDOT contracts plays a major role in the use of M/W/DBE firms by prime contractors. Conversely, many white male-owned small businesses contend that the DBE Program prevents them from being competitive. Overall, ESBs that are not also DBEs perceive that there are not enough incentives/benefits in the ESB program to allow them to effectively compete against DBE firms on construction projects. On consultant projects, the fact that DBE firms also qualify as ESB certified firms, places white male-owned ESB firms at a disadvantage. In general, all small businesses feel that they cannot compete with larger firms.

## **FINDINGS AND RECOMMENDATIONS**

The findings and recommendations included in this chapter are based on the analyses of the data represented in Chapters 2.0 through 7.0. In summary, the data supports the continuation of the Colorado Department of Transportation (CDOT) DBE (Disadvantaged Business Enterprise) program. The statistical and anecdotal analyses documents disparity in utilizing M/W/DBE firms in comparison to their availability and the anecdotal testimonies indicate lingering effects of discrimination in the transportation construction industry. For purposes of this report, M/W/DBE firms are all minority and women owned disadvantaged firms that are ready, capable and willing to perform work for CDOT. M/W/DBE firms are not limited to CDOT's

DBE certified DBEs. In addition to the M/W/DBE recommendations, we recommend CDOT strengthen its race-neutral ESB program.

CDOT has improved its program for small businesses since its last report and since the conclusion date of this report. It has:

- Adopted policies and procedures to increase M/W/DBE participation;
- Improved the ESB program to provide more opportunities for small businesses;
- Broke or “unbundled” prime contracts into smaller projects that DBE firms can compete with non-DBE firms;
- Evaluated and improved the good faith efforts process in conjunction with the industry and DBEs;
- Performed extensive outreach efforts to DBEs and ESBs, specifically on large and American Recovery and Reinvestment Act (ARRA) projects;
- Revised the Unified Certification Program with the City and County of Denver and Regional Transportation District (RTD); and
- Aggressively implemented improvements to the consulting data collection and reporting process.

While the DBE program has experienced many successes, there are several significant points that should be addressed.

**Findings:**

1. While all W/M/DBE firms are underutilized to some extent, African American firms were significantly underutilized in all areas of construction and consultant contracts;
2. Women-owned construction firms were not significantly underutilized with a disparity ratio of 91.40, while they were significantly underutilized in consulting subcontracts (Courts have held that a disparity index of less than 80 indicates significant underutilization and that project specific DBE goals should only be used to address significant underutilization);
3. The majority of DBE consultant utilization was achieved using DBE prime consultants and not small DBE businesses;
4. Based upon the data collected, many of the problems faced by DBEs are consistent with those faced by all small businesses.

To address the findings, the following recommendations are presented.

**Recommendation 1:** CDOT should expand its Emerging Small Business Program (ESB) and use it as its primary method to include small businesses, including M/W/DBE and non-M/W/DBE participation on Federal Highway Administration (FHWA) funded projects. Since it will take time to draft and adopt new policies and procedures, CDOT should continue its UDBE and ESB programs until the new policies and procedures are adopted.

**Recommendation 2:** CDOT should establish race neutral ESB certification requirements that mirror the DBE certification requirements including:

- Appropriate size standards for Colorado;
- ESB goals for construction contracts;
- ESB goals for consultant contracts based on specific task orders; and
- Reservation of selected small contracts for competition among ESB firms.

**Recommendation 3:** CDOT should continue to award points for unbundling approaches on design/build projects.

**Recommendation 4:** CDOT should add a geographic area column on the DBE Directory and describe which Regions the DBE is willing to perform work. Based on the geographic area, the good faith effort identification should only apply to the DBEs that are willing to work in the work codes identified in the request and in the Region of the Project.

**Recommendation 5:** CDOT should make non-confidential components of final good faith effort determinations available on its website.

**Recommendation 6:** Monthly consultant progress reports should be reviewed by both the Project Manager and the respective Regional Civil Rights Manager to determine if the prime consulting firm is on schedule with its DBE compliance.

**Recommendation 7:** Implement one tracking system to collect and monitor all consultants and subconsultants (DBE and non-DBE) payments by task order, work code and subaccount number.

**Recommendation 8:** CDOT should review the utilization of DBE firms on a quarterly basis to ensure that no disparity exists and report to the DBE Commission Subcommittee. It should conduct a subsequent disparity study within five years of this final report.

**Recommendation 9:** CDOT should continue to set overall DBE goals and contract-specific UDBE goals. The recommended overall DBE goal is **13.29** percent.

## **CHAPTER 1.0 – INTRODUCTION**



## CHAPTER 1.0 – INTRODUCTION

In October 2007, the Colorado Department of Transportation (CDOT) engaged D. Wilson Consulting Group, LLC to conduct the Statewide Transportation Disparity Study (Study). In addition to D. Wilson Consulting Group, the research team included Eugene Trujillo, Consultant and Folsom Point, LLC.

The primary objectives of the study were to determine:

1. If a disparity exists between the availability of capable minority/women-owned or disadvantaged firms and transportation industry contracts awarded to those firms.
2. The absence or presence of discrimination in transportation federal aid contracting in Colorado.
3. If identified disparities relate to the implementation of an affirmative action program in Colorado's Highway Construction and Design Program.
4. The extent to which Disadvantaged Businesses, defined as minority and women owned business, participate in the procurement of United States Department of Transportation (USDOT) federally funded highway contracts within Colorado in highway construction services and consultant services.
5. Whether DBE participation is representative of the availability of minority and women owned businesses ready, willing and able to participate in federally funded State contracts within Colorado. Calculate the percentage of ready, willing and able DBE firms by each of the presumed groups as defined in 49 CFR Part 26 to be presumed disadvantaged.
6. Presumed disadvantaged groups that are over or underutilized for federally funded State contracts based on their availability.
7. The magnitude of differences between DBE availability (based on capacity) and participation on federally funded State contracts.

To meet the objectives of the study, the study was conducted in 10 stages:

1. Reviewed the impact of relevant court decisions on Disadvantaged, Minority and Woman Owned Business programs, including *City of Richmond v. J.A. Croson Company*; *Adarand Constructor v. Pena*; *Western States Paving Co. v. Washington Department of Transportation*; *Contractors Ass'n. of Eastern Pennsylvania v. City of Philadelphia*; *Engineering Contractors of South Florida v. Metropolitan Dade County*; *Concrete Works of Colorado v. City and County of Denver*; *Northern Contracting, Inc. v. State of Illinois, et al.* and *Rothe Development Corp. v. US Department of Defense*.
2. Reviewed procurement policies, procedures and programs.
  - Reviewed and analyzed written documents regarding contracting and procurement of construction and consultant services and the DBE program.
  - Interviewed key personnel associated with contracting and procurement and the DBE program.

- Reviewed federal and state statutes, regulations, policies and procedures that impact the DBE program or other areas of construction and consultant contracting and purchasing.
3. Determined the relevant geographic market area by business category.
- The relevant geographic market area is determined in two steps. The first takes in to consideration the political jurisdiction, this case, the state of Colorado. The second part takes into consideration where CDOT spent at least 75 percent of its contracting dollars.
  - The relevant geographic market area is the state of Colorado.
4. Determined the availability of non-minority, minority and woman owned businesses in the relevant market area by business category.
- The availability of M/W/DBE and non-M/W/DBEs were identified within the state of Colorado. Through a business survey, demographic and capability data were collected and analyzed. Data parameters from the survey were then applied to the firms to determine if they were ready, willing and able.
  - M/W/DBE firms represent approximately:
    - Construction
      - M/W/DBE Construction Prime Contractors – 30.73 percent of the construction firms available to work on CDOT contracts.
      - M/W/DBE Construction Subcontractors – 22.30 percent of the construction firms available to work on CDOT contracts.
    - Consultant
      - M/W/DBE Consultant Prime Contractors – 28.05 percent of the construction firms available to work on CDOT contracts.
      - M/W/DBE Subconsultants – 44.74 percent of the consultant firms available to work on CDOT contracts.
5. Determined what percentage of the contracts and contract dollars were paid to disadvantaged businesses.
- Contract award and payment data were collected from CDOT in electronic format and through a manual review of contracts.
  - The utilization was calculated by dividing the dollars paid to M/W/DBEs by the total dollars paid.
  - Utilization analyses were performed for each minority, ethnic and gender group.
  - M/W/DBE subcontractor utilization averaged 11.49 percent for construction and 4.48 percent for consultants during the study period.
6. Determined if a disparity exists between the utilization of M/W/DBE firms versus the available M/W/DBE firms and if so, determined if the disparity is statistically significant.
- Compared the availability data to the utilization data to determine if disparity exists; and, if the disparity is statistically significant.

- Analyzed all CDOT construction and consultant contracts. The following are the disparity results for the construction and consultant contracts independently.
  - i. Construction – African American, Native American, Asian American, Hispanic American and Other M/W/DBE owned firms were significantly underutilized. Nonminority Women were underutilized but not significantly.
  - ii. Consultant Services – All M/W/DBE groups were significantly underutilized.
- 7. Collected and analyzed anecdotal testimony from M/W/DBE and non-M/W/DBE firms through interviews and public hearings. The anecdotal evidence assists to explain the disparity identified, if any. The information came from business owners reciting their experiences in contracting or attempting to contract with the CDOT or its prime contractors.
  - Personal Interviews were conducted with 86 firms; 59 DBE and 27 non-DBE firms.
  - Three (3) Public Hearings were held in Denver, Greeley and Pueblo.
  - An Online Business Survey was conducted, a total of 723 individuals participated.
  - Four (4) Round Tables were conducted with:
    - i. Colorado Contractors Association
    - ii. Durango Firms that primarily worked in CDOTs Region 5
    - iii. Hispanic American owned firms
    - iv. African American owned firms
- 8. Conducted an analysis of the private market contracting from questions in the telephone survey (described below) provided a basis to extrapolate data representative of firm experience in bidding and winning contracts in the private sector.
  - Key areas addressed in the telephone survey asked about line of business, number of bid attempts, contracts won and largest contract secured during the study period.
  - The telephone survey also distinguished between public sector and private sector experiences.
- 9. Collected and analyzed approximately 700 telephone survey responses. The questions asked during the telephone survey were divided into four (4) categories:
  - General demographic questions
  - Questions that addressed possible barriers business owners may have encountered when attempting to do business with CDOT.
  - Questions that addressed possible discriminatory practices of prime contractors.
  - Questions that addressed availability to work for CDOT.



The following chapters detail the methodology, findings and recommendations:

- Chapter 2 – Legal Analysis
- Chapter 3 – Review of Contracting Policies, Procedures and Programs
- Chapter 4 – Availability and Private Sector Analyses and Survey Results
- Chapter 5 – Construction Data Collection, Relevant Market Area, Utilization and Disparity Analyses
- Chapter 6 – Consultant Data Collection, Relevant Market Area and Disparity Analyses
- Chapter 7 – Anecdotal Analysis
- Chapter 8 – Findings and Recommendations

## **CHAPTER 2.0 – LEGAL ANALYSIS**



## CHAPTER 2.0 - LEGAL ANALYSIS

### 2.1 Introduction

This section provides a summary of the state of the law applicable to affirmative action programs of public contracting agencies as the law has been interpreted and evolved in the federal courts.

In the leading United States Supreme Court cases of *City of Richmond v. J.A. Croson Co.* (*Croson*) and *Adarand v. Peña* (*Adarand*)<sup>1</sup>, the Supreme Court held that the constitutionality of remedial race conscious affirmative action programs are subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution<sup>2</sup>.

Since the *Adarand* decision six Federal Court of Appeals decisions have addressed the evidence necessary in a disparity study to support any race-conscious remedies put into place by governmental agencies. These cases include *Contractors Ass'n. of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), *on remand*, 893 F.Supp. 419 (E.D. Pa. 1995), *aff'd*, 91 F.3d 586 (3d Cir. 1996) ("*Contractors I, II and III*"); *Engineering Contractors of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), *aff'd*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997); *Concrete Works of Colorado v. City and County of Denver*, 823 F.Supp. 821 (D. Colo. 1993), *rev'd* 321 F.3d 950 (10<sup>th</sup> Cir. 2003) ("*Concrete Works II*"); *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005) ("*Western States Paving*"); *Northern Contracting, Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007); and *Rothe Development Corp. v. US Department of Defense* ("*Rothe Development Corp.*"), 545 F.3d 1023 (Fed. Cir. 2008). These cases and other lower court cases have developed the standards that are necessary for race- and gender-conscious programs since the *Croson* decision.

The basic rules for race- or gender-conscious programs include:

- A race-based remedial program is subject to strict judicial scrutiny which requires that the government must show a strong basis in the evidence for the compelling governmental interest.
- Any race- or gender-conscious programs must be narrowly tailored to remedy the identified compelling governmental interest.

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1. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) held that the strict scrutiny standard applies to state and local race conscious affirmative action programs and *Adarand Constructors, Inc. v. Federico Peña*, 115 S. Ct. 2097 (1995) held that the strict scrutiny standard applies to federal affirmative action programs.

2. *Id.*

- Statistical evidence of discrimination is necessary; anecdotal evidence of discrimination is complementary to statistical evidence of discrimination.
- A lesser standard, intermediate judicial scrutiny, is applicable when analyzing the constitutionality of gender-based programs. The intermediate judicial scrutiny standard requires that a gender-based remedial program must serve important governmental objectives and be substantially related to the achievement of those objectives.

This section analyzes how these federal courts have evaluated the constitutionality of race- and gender-conscious programs. Although all federal circuits will be discussed, particular emphasis will be placed on the decisions of the Tenth Circuit,<sup>3</sup> and the recent Court of Appeals decisions, including *Rothe Development Corp. and Western States Paving*.

## **2.2 Standards of Review for Race- and Gender-Conscious Remedial Programs**

### **2.2.1 Race-conscious Remedial Programs**

In *Croson* the United States Supreme Court affirmed that under the Fourteenth Amendment of the United States Constitution the proper standard for state and local race-based programs is strict scrutiny.<sup>4</sup> The governmental entity must show that the racial classification is narrowly tailored to achieve a compelling governmental interest.<sup>5</sup> The Court held that a state or local governmental entity may create a race-based remedial program to rectify the effects of identified, systemic, past racial discrimination within its jurisdiction.<sup>6</sup>

### **2.2.2 Gender-Conscious Remedial Programs**

In evaluating gender-conscious remedial classifications that operate to the advantage of women, the Supreme Court has used an “intermediate” level of scrutiny, which is a less stringent level of review than the strict scrutiny level of review used to analyze race-based classifications. Most “intermediate” level of review cases require the governmental entity to demonstrate an important governmental objective and to develop a program that bears a direct and substantial relation to achieving that objective.<sup>7</sup> Under the intermediate level of scrutiny, some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. In *Coral Construction v. King County*<sup>8</sup>, the

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3. The jurisdiction of the Tenth Circuit includes the States of Colorado, Oklahoma, Kansas, New Mexico, Wyoming and Utah, plus those portions of the Yellowstone National Park extending into Montana and Idaho.

4. *Croson*, 488 U.S. at 493-95.

5. *Id.* at 493.

6. *Id.* at 509.

7. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Craig v. Boran*, 429 U.S. 190, 211 (1976) (Powell, J. concurring).

8. 961 F.2d 910 (9<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 1033 (1992).

Ninth Circuit Court of Appeals noted that: “The mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny.”<sup>9</sup>

Although the United States Supreme Court has not ruled directly on the type of scrutiny it would use for a WBE program, the lower federal courts have applied the “intermediate” scrutiny level of review, rather than the strict scrutiny applicable to race-conscious programs.<sup>10</sup> However, some cases have required that the classification based on gender satisfy an “exceedingly persuasive” justification test.<sup>11</sup> In the *Engineering Contractors* case, the Eleventh Circuit Court of Appeals recognized that the U.S. Supreme Court’s decision in *United States v. Virginia*,<sup>12</sup> may have “signaled” a heightened level of scrutiny by stating that a governmental agency must demonstrate an “exceedingly persuasive justification” for that action; however, the court concluded that unless and until the United States Supreme Court indicated otherwise, intermediate scrutiny remains the applicable Constitutional standard in gender discrimination cases and a gender-conscious program may be upheld as long as it is substantially related to an important governmental objective.<sup>13</sup> Since the level of scrutiny for gender based programs is not consistently defined by the Circuit Courts and the United States Supreme Court, for purposes of this report, the strict scrutiny level of review will be assumed.

### **2.3 Evidence Necessary for Minority, Women And Disadvantaged Business Enterprise Programs**

In response to the *Adarand* Supreme Court decision, the U.S. Department of Transportation (USDOT) revised its DBE regulations in February 1999 in an attempt to modify the federal DBE program consistent with the “narrow tailoring” requirements set forth in *Adarand III*.<sup>14</sup> The District Court in the *Adarand* case had held that the prior federal regulations were not narrowly tailored for various reasons.<sup>15</sup>

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9. 961 F.2d at 932.

10. See, e.g., *Concrete Works II*, 321 F.3d 950 (10<sup>th</sup> Cir. 2003); *Coral Construction Co. v. King County*, 941 F.2d 910 (9<sup>th</sup> Cir. 1991); *Philadelphia*, 91 F.3d 586 (3d Cir. 1996); *Engineering Contractors Association of South Florida, Inc., et. al. v. Metropolitan Dade County, et. al.*, (“*Engineering Contractors*”), 122 F.3d 895 (11<sup>th</sup> Cir. 1997).

11. *United States v. Virginia Military Institute*, 518 U.S. 515 (1996); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982); *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F.2d 583, 595 (6<sup>th</sup> Cir. 1987); *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9<sup>th</sup> Cir. 1987).

12. 518 U.S. 515 (1996).

13. *Engineering Contractors*, 122 F.3d at 908.

14. *Adarand III*, 515 U.S. 200 (1995); 49 CFR Parts 23 and 26, 64 Fed. Reg. 5095 (February 2, 1999).

15. For example, the District Court held that the DBE regulations were over-inclusive and under-inclusive, i.e., they caused presumptions of disadvantage for groups of individuals who were not disadvantaged, and they excluded groups of individuals who were disadvantaged.

In response to the modifications to the federal DBE regulations, in *Adarand v. Slater*,<sup>16</sup> the Tenth Circuit Court of Appeals upheld the modified federal regulations. The Court held that Congress had demonstrated a compelling interest that required the DBE program. The Court held that the government had shown two barriers that demonstrated a link between public funds for construction contracts and the channeling of those funds due to private discrimination. Those barriers included evidence of behaviors by prime contractors, unions, lenders and bonding companies that formed barriers to the formation of DBE subcontractors, and informal, racially exclusionary business networks that dominated the subcontracting construction industry created barriers to fair competition between minority and nonminority subcontractors.<sup>17</sup> These business networks were exemplified by long-standing relationships between contractors and majority subcontractors. The Court noted that while this evidence was not completely dispositive, it strongly supported the government's claim that there are significant barriers to minority competition in the public subcontracting market, raising the specter of racial discrimination.<sup>18</sup>

Subsequent to the Tenth Circuit in *Adarand*<sup>19</sup>; in *Western States Paving Co., Inc. v. Washington State Department of Transportation*,<sup>20</sup> the Ninth Circuit Court of Appeals agreed that: “[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in evidence for concluding that-in at least some parts of the country-discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts.” By stating that Congress had a strong basis to conclude that in at least some parts of the country discrimination within the transportation exists, it left open the question of whether it exists specifically in the states and local governments of the federal Circuits. Therefore, it is necessary to show that discrimination in the transportation industry in the Colorado market exists. In addition, the Ninth Circuit in *Western States Paving Co.* stated that both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination.

Once the government has shown a compelling governmental interest, it must show that its program is narrowly tailored to remedy that interest. The Ninth Circuit noted that the

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16. 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *cert. dismissed*, *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) (*per curiam*).

17. *Adarand v. Slater* at 1167-1168. For purposes of the remainder of this report, women-owned and minority-owned businesses will be referred together as minority-owned businesses unless otherwise specified.

18. *Id.* at 1174.

19. The Eighth Circuit Court of Appeals agreed that the revised federal regulations provide for Constitutional DBE programs in *Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 (8<sup>th</sup> Cir. 2003), *cert. denied* 541 U.S. 1041 (2004); *Sherbrooke Turf, Inc. v. Minnesota Dept. of Transportation*, 345 F.3d 964 (8<sup>th</sup> Cir. 2003), *cert. denied* 541 U.S. 1041 (2004).

20. 407 F.3d 983 (9<sup>th</sup> Cir. 2005).

Supreme Court has identified several factors that are relevant in determining whether a racial classification is narrowly tailored: “the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the numerical goals to the relevant labor market; and the impact of the relief on the rights of third parties.”<sup>21</sup>

## **2.4 Burden of Proof**

The *Croson* decision imposes the original burden of proof upon the government to demonstrate that a challenged DBE program is supported by documented evidence of past discrimination and/or current discrimination. The plaintiff then has the burden to prove that the DBE program is unconstitutional through various methods, such as the methodology used by the government to show that past and/or present discrimination exists is flawed, the disparity exists due to race-neutral reasons or controverting data exists.

### **2.4.1 Western States Paving Conclusions**

In *Western States Paving*, the constitutionality of the requirement that contractors use race and gender based criteria when awarding sub-contracts was challenged both “on its face” and “as applied”. The Court criticized the Tenth Circuit Court of Appeals, claiming that it had not looked at the regulations “as applied.” However, all that was being challenged in *Adarand* ultimately was the constitutionality of the regulations on their face. A program can be constitutional “on its face” or as applied in general but be unconstitutional as applied in a particular case. While the Ninth Circuit Court of Appeals in *Western States Paving* held that the revised DBE regulations served a compelling government interest nationally and that the regulations were narrowly tailored for the transportation contracting industry, the Court held that the State of Washington failed to prove that there was any evidence of discrimination within its own contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored to further Congress's compelling remedial interest. The Court held that it was necessary for WSDOT to conduct a disparity study to be able to show that its DBE program was narrowly tailored.

### **2.4.2 Rothe Development Corp. v. DOD Disparity Study Requirements**

*Rothe Development Corp.* involved a challenge of the constitutionality the federal Department of Defense and Department of Air Force (“DOD”) DBE program, which sets a 5%

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21. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

DBE goal for federal contracting dollars awarded by DOD. The Federal Circuit Court of Appeals held that DOD's DBE program is unconstitutional based on the lack of a compelling governmental interest.<sup>22</sup> The Court's opinion was based on the Court's analysis of what was before Congress when it set the 5% DBE goal for DOD contracts. The primary evidence presented by DOD to the Court was six disparity studies conducted at state or local levels, offered by DOD to show that discrimination exists in the defense industry. The disparity studies were conducted between 2002 and 2005 for Dallas, Cincinnati, New York, Cuyahoga County, Ohio, Alameda County, California and the Commonwealth of Virginia.

The Court analyzed whether it is inappropriate to rely upon disparity studies that are more than five years old. The Court refused to adopt a per se rule that disparity studies older than five years are "stale", especially when it is the most current data available.

Second, the Court analyzed whether the six disparity studies were actually "before" Congress when it enacted the 5% DBE goal. Although the Court seemed to indicate that it believed the studies were not actually discussed before Congress, it decided that it was not necessary to decide whether they were "before" Congress because the Court said that the studies were flawed. See Section 2.4.8 below for a discussion of the other *Rothe Development Corp.* disparity requirements.

### **2.4.3 Race-Neutral Remedies**

The *Western States Paving* case noted that although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative," it does "require serious, good faith consideration of workable race-neutral alternatives." *Grutter v. Bollinger*, 539 U.S. 306, 339, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003); see also *Adarand III*, 515 U.S. at 237-38 (when undertaking narrow tailoring analysis, courts must inquire "whether there was any consideration of the use of race-neutral means to increase minority business participation in government contracting" (internal quotation marks omitted)).

The TEA-21 DBE regulations place a preference on the use of race-neutral means-including informational and instructional programs targeted toward all small businesses-to achieve a government's DBE utilization goal. The regulations require a State to "meet the maximum feasible portion of [its] overall goal by using race-neutral means." 49 C.F.R. § 26.51(a). Only when race-neutral efforts prove inadequate do the regulations authorize a State to resort to race-conscious measures to achieve the remainder of its DBE utilization goal. *Western States Paving* recognized, "[w]e therefore are dealing here with [regulations] that

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22. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.



emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized.”<sup>23</sup>

#### **2.4.4 Flexibility**

*Western States Paving* also emphasizes the need for flexibility to show narrowly tailoring in the DBE program. The Court noted that a quota system is the hallmark of an inflexible affirmative action program. The Court quoted *Grutter*, stating that “[w]hile [q]uotas impose a fixed number or percentage which must be attained, or which cannot be exceeded, a permissible goal ... requires only a good-faith effort ... to come within a range demarcated by the goal itself.”<sup>24</sup> The Court recognized that the TEA-21 DBE regulations explicitly prohibit the use of quotas. 49 C.F.R. § 26.43(a). Moreover, where race-conscious contracting goals are used, prime contractors can meet that goal either by subcontracting the requisite amount of work to DBEs or by demonstrating good faith efforts to do so. *Id.* § 26.53(a). A recipient of federal funds likewise cannot be penalized by the federal government for failing to attain its DBE utilization goal as long as it undertakes good faith compliance efforts. *Id.* § 26.47(a). TEA-21 therefore provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.<sup>25</sup>

#### **2.4.5 Time Limitations**

The *Western States Paving* Court also noted that a narrowly tailored remedial program must also include adequate durational limitations. The Court noted that TEA-21 comports with this requirement because it is subject to periodic reauthorization by Congress. The debates concerning reauthorization ensure that Congress regularly evaluates whether a compelling interest continues to justify TEA-21’s minority preference program. Other cases have noted that time limitations are required for DBE/MBE/WBE programs. See *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Richmond v. Croson*, 488 U.S. 469 (1989) (federal DBE regulations are limited to three years); *Sherbrooke and Gross Seed*, 345 F.3d 964 (2003) (states may terminate their programs if they meet their annual overall goal through race-neutral means for two consecutive years); *Adarand VI* (DBE certification is limited under federal regulations to three years); *H.B. Rowe, Inc. v. Tippett*, 2008 W.L. 5205638 (E.D.N.C. December 9, 2008)(No. 5:03-CV-278-BO (3))(MWBE statute has an expiration date of August 31, 2009).

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23. *Id.* at 994, citing *Adarand VII*, 228 F.3d at 1179.

24. Insert *Grutter* cite.

25. See also *Sherbrooke Turf, Inc.*, 345 F.3d at 972 (“the [TEA-21] DBE program has substantial flexibility”).

#### **2.4.6 Relevant Market**

To be narrowly tailored, a minority preference program must establish utilization goals that bear a close relationship to minority firms' availability in a particular market. In *Croson*, for example, one of the constitutional shortcomings that the Court identified in the Richmond program was the city's use of the proportion of minorities in the local population to establish the 30% quota.<sup>26</sup> The Court explained that this numerical goal "rest[ed] upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population."<sup>27</sup>

The TEA-21 DBE regulations avoid this pitfall. The regulations do not establish a mandatory nationwide standard for minority participation in transportation contracting. The regulations clarify that the 10% DBE utilization goal found in the TEA-21 statute is "aspirational" only and that States and local governments are not required-or authorized-to set their own DBE/MBE/WBE goals at 10% by simply relying upon the statute.<sup>28</sup>

#### **2.4.7 Ready, Willing and Able DBEs**

The TEA-21 regulations provide for each State to establish a DBE utilization goal that is based upon the proportion of ready, willing and able DBEs in the State's transportation contracting industry.<sup>29</sup> This provision ensures that each State sets a minority utilization goal that reflects the realities of its own labor market. Implementation of the race-conscious contracting goals for which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although this places a very real burden on non-DBE firms, consistent with the Tenth Circuit, the Ninth Circuit held that this fact alone does not invalidate TEA-21. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.<sup>30</sup>

#### **2.4.8 Evidentiary Framework**

Discriminatory Evidence. *Croson* established that a governmental entity must demonstrate identified, systemic discrimination on the basis of race.<sup>31</sup> Mere statistics and broad assertions of societal discrimination will not support a race or gender-conscious remedial program. The governmental agency must demonstrate a pattern of such discrimination in the

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26. *Croson*, 488 U.S. at 729-730.

27. *Western States Paving*, 407 F.3d at 995.

28. *Western States Paving*, 407 F.3d at 994.

29. 64 Fed.Reg. 21 (February 2, 1999).

30. *Western States Paving*, 407 F.3d at 995.

31. *Croson*, 488 U.S. at 469.

relevant market area to establish adequate evidence of discrimination.<sup>32</sup> The evidence must cover each racial group to whom a remedy would apply.<sup>33</sup>

In *Northern Contracting, Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007), the Seventh Circuit Court of Appeals held that relative available DBE/MBE/WBE firms are those that are “ready, willing and able to participate on DOT contracts, and it accepted use of custom census data vs. simply using prequalified DBE firms.”<sup>34</sup> The Court noted that the federal regulations gave no indication that it intended to narrow ready, willing and able firms to prequalified firms. In *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10<sup>th</sup> Cir. 2003), the Tenth Circuit recognized that disparity studies must only determine whether the firms are capable of “undertak[ing] prime or subcontracting work in public construction projects.”<sup>35</sup>

There are several ways to establish the necessary evidence to support a race- or gender-conscious remedial program. The first and most important type of evidence is a statistically significant disparity between the number of available contractors ready, willing and able to perform a particular service and the number utilized by the governmental entity or the entity’s prime contractors. The second type of evidence is evidence of a pattern of individual discriminatory acts that are supported by appropriate statistical proof.<sup>36</sup> The third type of evidence, which was required by the Ninth Circuit Court of Appeals in *Coral Construction*, was both statistical and anecdotal evidence. The Court noted that anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”<sup>37</sup> The Court recognized that the anecdotal evidence provided in *Coral Construction* was considerably more than that provided by the Richmond City Council in *Croson*, including convincing affidavits of fifty-seven minority and female contractors.<sup>38</sup>

Availability Analysis In addition to a firm being in the relevant geographic market area, the firm must be ready, willing and able to perform the work for the governmental entity or its

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32. *Croson*, 488 U.S. at 509.

33. *Croson*, 488 U.S. at 506.

34. *Id.* at 723.

35. *Id.* at 984. The Tenth Circuit Court of Appeals accepted the argument that the minority-owned firm’s size is a result of discrimination instead of an indication of its qualifications, willingness, or ability to perform construction services. The Court also rejected the concept that a minority-owned firm must be capable of performing a particular contract, but instead must only be capable of performing City construction contracts.

36. *Croson*, 488 U.S. at 509.

37. *Coral Construction*, 941 F.2d at 919.

38. *Coral Construction*, 941 F.2d at 917-18. See also, *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9<sup>th</sup> Cir. 1991)(Anecdotal evidence included evidence that MBES were denied contracts even though they were the low bidders; MBEs were told that they were not qualified when later they were found to be qualified ; MBEs were refused work even when they had been awarded the contract as a low bidder; and MBEs were harassed by City personnel to discourage them from bidding on City contracts).

prime contractors. In order to be ready, the DBE firm must be qualified to do the work. In *Croson*, the Supreme Court held that where special qualifications are required to fill particular types of work, comparisons to the general population, rather than to those who are capable of performing the specialized work, have no probative value.<sup>39</sup> Courts have held that when examining capacity or readiness, it is necessary to examine prime contractors and subcontractors separately.<sup>40</sup>

The DBE firms must also be willing to provide the required services. In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*,<sup>41</sup> the Third Circuit Court of Appeals stated that in the absence of a reason to believe otherwise, one can assume that participants in a market with the ability to undertake specific work are “willing” to undertake such work.<sup>42</sup>

Finally, the DBE firms must be able to perform the required services. Challenges to DBE programs often focus on the fact that DBE firms are not able to perform the work because of the smaller size of DBE firms.<sup>43</sup> In *Engineering Contractors*, the Court held that any remaining disparity after controlling for firm size no longer provided a “strong basis in evidence” to justify a procurement preference to black firms.<sup>44</sup>

The *Rothe Development Corp.* Court found that all six disparity studies that were used as DOD evidence to support DOD’s DBE program were flawed in their methodology of determining available DBE firms because although they may have found the firms to be willing and able, none of the studies actually determined whether the DBE firm was qualified. The Court noted that five of the six studies failed to account for potential differences in size or relative capacity of the DBE businesses vs. other businesses in the studies. The Court stated that the studies failed to account for the differences in the amount of work that bigger companies could perform, comparing what a company like Budweiser could sell vs. a small micro-brewery. All six of the disparity studies accounted for the relative size of contracts awarded to minority-owned firms by using the numerator in terms of contract dollars awarded to DBE firms and a denominator of the percentage of firms in the market area owned by minorities, instead of the percentage of total marketplace capacity those firms could provide.

The Court recognized that there are methods to control for capacity of DBE firms. For example, the studies could have performed a regression analysis “to determine whether there was a statistically significant correlation between the size of a firm and the share of contract-

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39. *Croson*, 488 U.S. at 501.

40. *Scott v. City of Jackson*, 199 F.3d 206 (5<sup>th</sup> Cir. 1999); *Engineering Contractors v. Dade County*, 943 F.Supp. 1546 (S.D. Fla. 1996).

41. 91 F.3d 586, 603 (3d Cir. 1996).

42. See also, *Concrete Works*, 36 F.3d at 1529.

43. *Concrete Works*, 6 F.3d at 1528-29.

44. *Engineering Contractors* at 913-924.

dollars awarded to it.”<sup>45</sup> A regression analysis is a statistical procedure for determining the relationship between a dependent and independent variable, for example, the dollar value of a contract award and firm size. The point of a regression analysis is to determine whether the relationship between the two variables is statistically meaningful.

In conclusion, *Rothe Development Corp.* held that an analysis of ready and willing DBEs must be based on a list of DBEs who have been identified through reliable sources. The capability or availability analysis must take into account the firm’s capability based on the size of the DBE firm as compared to the size of the non-DBE firms.<sup>46</sup>

The Ninth Circuit in *Western States Paving* agreed with the *Sherbrooke and Gross Seed* cases that it is necessary to undertake an as-applied inquiry into whether a government’s DBE program is narrowly tailored. The *Western States Paving* Court agreed with the *Adarand* that even when discrimination is present within a State, a remedial program is only narrowly tailored if its application is limited to those minority groups that have actually suffered discrimination. In *Croson*, for example, one of the rationales upon which the Supreme Court relied to invalidate the city’s quota system was the program’s expansive definition of “[m]inority group members,” which encompassed “[c]itizens of the United States who are Blacks, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.” 488 U.S. at 478, 109 S.Ct. 706 (second alteration in original). The Court admonished that the random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggested that perhaps the city’s purpose was not in fact to remedy past discrimination.

The Ninth Circuit Court of Appeals noted that it had previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination. In *Monterey Mechanical Co. v. Wilson*, 125 F.3d at 704, the Ninth Circuit relied upon *Croson* to invalidate a California statute that required prime contractors on public projects to subcontract 15% of the work to minority-owned businesses and 5% to woman-owned businesses. The statute defined the term “minority” to include Blacks, Hispanics, Native Americans, Pacific-Asians, Asian-Indians and over two-dozen subgroups. *Id.* at 714, 109 S.Ct. 706. The Court concluded that the statute was not narrowly tailored because it provided race-based preferences to “groups highly unlikely to have been discriminated against in the California construction industry.” *Id.* The overly inclusive designation of minority groups that benefited from the program was a “red flag [ ]

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45. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

46. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.” *Id.*; The Court also cited *Builders Ass'n of Greater Chicago v. County of Cook*, 256 F.3d 642, 647 (7th Cir.2001) (holding that an ordinance that established minimum levels of minority participation in county construction contracts was not narrowly tailored because it afforded preferences to a “laundry list” of minorities, not all of whom had suffered discrimination); *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 737 (6th Cir.2000) (invalidating a state statute that set aside 5% of state construction contracts for “Blacks, American Indians, Hispanics, and Orientals” because “[b]y lumping together [these] groups, ... the [program] may well provide preference where there has been no discrimination, and may not provide relief to groups where discrimination might have been proven”); *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C.Cir.1992) (“the random inclusion of racial groups for which there is no evidence of past discrimination in the construction industry raises doubts about the remedial nature of [a minority set-aside] program” (internal quotation marks omitted)).

Accordingly, each of the principal minority groups benefited by the state’s DBE program must have suffered discrimination within the State. If that is not the case, then the DBE program provides minorities who have not encountered discriminatory barriers with an unconstitutional competitive advantage at the expense of both non-minorities and any minority groups that have actually been targeted for discrimination.

The Ninth Circuit also noted that Washington’s DBE program closely tracked the sample DBE program developed by the USDOT. In setting its DBE goal for the year 2000, the WSDOT first calculated the relative availability of ready, willing and able DBEs in the State. It did so by dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory by the total number of transportation contracting firms listed in the Census Bureau’s Washington database. This calculation yielded a figure of 11.17%, which represented the baseline availability of DBEs.

The WSDOT then adjusted this figure to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs on state projects between 1994 and 1998. The WSDOT determined that an upward adjustment was necessary to account for capacity because DBEs had performed approximately 18% of the work on state projects during that period. No adjustment was made, however, to account for discriminatory barriers in obtaining bonding and financing. The WSDOT likewise did not make any adjustment to its base figure to reflect the effects of past or present discrimination because it lacked any statistical studies evidencing such discrimination. On the basis of the upward adjustment for capacity, the WSDOT arrived at a final DBE utilization goal of 14%. The WSDOT then sought to ascertain

the proportion of this goal that could be achieved through race-neutral means. In making that determination, it relied upon the 9% DBE participation rate on state-funded contracts that did not include affirmative action components. The WSDOT accordingly reasoned that it would need to achieve 5% of its 14% DBE utilization goal through race-conscious means. The USDOT approved the WSDOT's goal-setting methodology and the totality of its 2000 DBE program as being compliant with the federal regulations. The Ninth Circuit concluded, however, that the information relied upon by WSDOT was inadequate and that a disparity study was necessary. The Court referred to WSDOT's adjustments as oversimplified and held that it had not properly adjusted its availability pool of DBEs to those ready, willing and able in its jurisdiction.

WSDOT's statistical evidence had not accounted for factors that may affect the relative capacity of DBEs to undertake contracting work. The Court noted that the fact that DBEs constituted 11.17% of the Washington market did not establish that they were able to perform 11.17% of the work. See *Md. Troopers Ass'n v. Evans*, 993 F.2d 1072, 1077 (4th Cir.1993) ("Inferring past discrimination from statistics alone assumes the most dubious of conclusions: that the true measure of racial equality is always to be found in numeric proportionality."). The Court discussed that DBE firms may be smaller and less experienced than non-DBE firms (especially if they are new businesses started by recent immigrants) or they may be concentrated in certain geographic areas of the State, rendering them unavailable for a disproportionate amount of work. See *Coral Construction Co. v. King County*, 941 F.2d 910, 919 (9th Cir.1991) ("Statistical evidence often does not fully account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral."); *Associated Gen. Contractors of Ohio, Inc.*, 214 F.3d at 736 ("If [minority-owned firms] comprise 10% of the total number of contracting firms in the state but only get 3% of the dollar value of certain contracts, that does not alone show discrimination or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have the resources to complete."); *O'Donnell Construction Co.*, 963 F.2d at 426 (holding that the small proportion of D.C. public contracts awarded to minority-owned firms did not establish discrimination because "[m]inority firms may not have bid on ... construction contracts because they were generally small companies incapable of taking on large projects; or they may have been fully occupied on other projects; or the District's contracts may not have been as lucrative as others available in the Washington metropolitan area; or they may not have had the expertise needed to perform the contracts; or they may have bid but were rejected because others came in with a lower price."). The Court held that WSDOT's statistical evidence had not controlled for any of these factors and after controlling for those factors, there

must exist a statistically significant disparity between the minority-owned firms ready, willing and able to do the work and those selected to do the work. The Court also recognized that this statistical evidence produced by WSDOT was not supported by sufficient anecdotal evidence.

Active or Passive Participation. *Croson* requires that the governmental agency implementing a DBE program must have either actively or passively participated in the discrimination.<sup>47</sup> However, *Concrete Works* recently held that a court does not have to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination.<sup>48</sup> An entity is an active participant if the evidence shows that it has created barriers that actively exclude DBEs from contracting opportunities. An entity is a passive participant in a private system of discrimination where it provides tax dollars into that discriminatory industry.<sup>49</sup>

Post-enactment Evidence. The Supreme Court in *Croson* did not address the issue of whether post-enactment evidence could be used to justify a DBE program. However, since the *Croson* decision, numerous cases have found post-enactment evidence of discrimination sufficient to justify implementation of a DBE program.<sup>50</sup> The Ninth Circuit required both pre-enactment and post-enactment evidence in *Coral Construction v. King County*, 941 F.2d 910 (9<sup>th</sup> Cir. 1991).

In *Shaw v. Hunt*, 517 U.S. 899 (1996), the Supreme Court rejected the use of reports that provided evidence of discrimination in North Carolina because the reports were not developed before the voting districts at issue were designed. Since that case, the Federal Circuit court of Appeals in *Rothe Development Corp.* and two district courts have rejected the use of post-enactment evidence in the evaluation of minority business programs.<sup>51</sup>

Geographic Market. The Ninth Circuit Court of Appeals stated in *Coral Construction* that a DBE (or MBE) program must limit its geographical scope to the boundaries of the enacting jurisdiction.<sup>52</sup> See also, *Concrete Works of Colorado*, (Denver's disparity study used the geographic areas in which the City of Denver spent the bulk of its construction funds).<sup>53</sup>

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47. *Id.*

48. *Concrete Works*, 6 F.3d at 1522. The Tenth Circuit held that the City correctly showed that it indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against M/WBE subcontractors in other private portions of their business. However, most courts have required active or passive participation in the discrimination.

49. *Croson*, 488 U.S. at 492.

50. See, e.g., *Engineering Contractors v. Dade County*, 122 F.3d 895, 911 (11<sup>th</sup> Cir. 1997); *Contractors Association v. Philadelphia*, 6 F.3d 990 (2d Cir. 1993); *Concrete Works*, 36 F.3d 1513 (10<sup>th</sup> Cir. 1994).

51. *Associated Utility Contractors v. Baltimore*, 83 F.Supp.2d 613 (D. Md. 2000); *West Tenn. ABC v. Memphis City Schools*, 64 F.Supp.2d 714 (W.D. Tenn. 1999).

52. *Coral Construction*, 941 F.2d at 925.

53. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.



Relevant Time Frame for Analysis. It is not clear how many years must be reviewed in a disparity study. One court has held that two years is inadequate.<sup>54</sup> Another court has held that it was acceptable to study only one year.<sup>55</sup> While the *Croson* case indicated that it may be a fatal flaw to rely on outdated evidence,<sup>56</sup> the Federal Circuit Court of Appeals refused to define when a study is outdated.<sup>57</sup> One District Court in the Northern District of California held that the most telling statistics may be an analysis of the evidence before there were any DBE (or MBE-WBE) programs compared with the evidence once the programs were implemented.<sup>58</sup> There is no specific legal rule, however, on what time period is proper.

Statistical Significance. In order to justify the need for a race-conscious remedial program, the disparity study must conclude that the disparity between available and utilized DBEs must be justified as a significant level of disparity—the disparity index. Specifically, a disparity index measures the participation of a group in CDOT contracting dollars by dividing that group’s contract dollar percentage by the related bidder or awardee percentage, and multiplying that result by 100%. The closer the resulting index is to 100%, the greater the measured group’s participation in the contracting dollars. *Engineering Contractors II*.<sup>59</sup> A disparity index of 80% or greater, which is close to full participation, has been accepted by cases as the cut-off percentage that is considered as not indicating discrimination. *Id.* This is consistent with *Contractors Association of Eastern Pennsylvania*,<sup>60</sup> *Cone Corp. v. Hillsborough County*,<sup>61</sup> *Concrete Works*,<sup>62</sup> *Associated General Contractors of California v. Coalition for Economic Equity*,<sup>63</sup> *Stuart v. Roache*,<sup>64</sup> and *Rothe Development Corp. v. US Department of Defense*,<sup>65</sup> (“A disparity ratio less than 0.80 indicates a relevant degree of disparity.”)

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54. *Phillips & Jordan v. Watts*, 13 F.Supp. 1308, 1315 (N.D. Fla. 1998).

55. *AGCC v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401, 1414 (9<sup>th</sup> Cir. 1991).

56. *Croson*, 488 U.S. at 499.

57. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

58. *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*, No. C92-2938 (N.D. Cal. Sept. 18, 1992); accord, *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10<sup>th</sup> Cir. 2003).

59. *Engineering Contractors Association of South Florida, Inc. v. Dade County*, 122 F.3d at 914. Eighty percent or greater is close to full participation by the minorities or women evaluated.

60. 6 F.3d at 1005 (crediting disparity index of 4 percent).

61. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

62. 36 F.3d at 1524 (crediting disparity index of up to 3.8 percent).

63. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

64. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

65. *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)). Many of these requirements were originally enunciated in the *Adarand* decisions in the United States Supreme Court and Tenth Circuit Court of Appeals.

## **2.5 Conclusion**

In creating and implementing a race- or gender-conscious program it is necessary to understand how the cases have interpreted and evolved the requirements of a constitutional DBE program. The cases provide a foundation of what is necessary to withstand challenges to governmental race- and gender-conscious remedial programs. It is important to understand what the cases provide is the type of evidence necessary to justify a DBE program, as well as what is necessary to narrowly tailor the program.

## **CHAPTER 3.0 – REVIEW OF CONTRACTING POLICIES, PROCEDURES AND PROGRAMS**



## **CHAPTER 3.0 - REVIEW OF CONTRACTING POLICIES, PROCEDURES AND PROGRAMS**

This chapter provides a comprehensive review of architectural and engineering (A & E) and construction contracting policies, procedures and programs of the Colorado Department of Transportation (CDOT) and how they impact Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBs). The purpose of this chapter is to describe the race- and gender-conscious and race neutral policies, procedures and programs of CDOT. The report recommendations will be based on the effectiveness of these programs in addition to the data analysis and anecdotal analysis. The programs that will be described in this chapter include construction, procurement of A & E services, DBE, ESB and other relevant programs of CDOT and others. This section is organized as follows:

- 3.1 Methodology of Review
- 3.2 DBE Program
- 3.3 Unified Certification Program
- 3.4 Supportive Services
- 3.5 ESB Program
- 3.6 Annual Goal Setting
- 3.7 Contract Goals
- 3.8 DBE Compliance and Enforcement
- 3.9 Architectural and Engineering Policies and Procedures
- 3.10 Construction Policies and Procedures
- 3.11 Transit Program

### **Introduction**

CDOT is governed by a non-partisan, 11-member Transportation Commission appointed by the Colorado Governor and confirmed by the Colorado State Senate to represent 11 geographic regions of the state. The Commissioners serve four-year terms and to provide continuity, the expiration dates of their terms are staggered.

The Commission is responsible for setting transportation policy and allocating available funds. The Transportation Commission formulates and adopts all CDOT budgets (other than for the Division of Aeronautics) and State transportation programs, including construction project priorities based on the Statewide Transportation Improvement Programs (STIP). The Commission has a Secretary who is an employee of CDOT and is elected by the Commission. The Secretary and the Secretary's staff coordinate all information provided to Commissioners and assist the Executive Director of CDOT in planning Commission meeting agendas.

The Commission also has a DBE Committee that was formed in 1985 to implement policies that focus on issues involving DBE and ESB companies. The DBE Committee reviews policy, legal, budget and program issues related to CDOT's DBE and ESB programs. It monitors the activities of the Center for Equal Opportunity, reports the activities and makes recommendations to the full Commission. The DBE Committee reviews and monitors the DBE Monthly Reports by Ethnicity and Gender prepared by the CDOT Center for Equal Opportunity, including the status of the underutilized DBEs, annual goal-setting process and documentation, and other special reports either requested by the DBE Committee or initiated by the Center for Equal Opportunity. The DBE Committee also reviews and discusses proposed changes to CDOT's DBE standard special provision.

CDOT is organized into six Regions and a Headquarters located in Denver.

- Region 1 includes Central Colorado, Vail Pass to Kansas, except the Denver Metro area with its office located in Aurora.
- Region 2 includes Southeast Colorado with its office located in Pueblo.
- Region 3 includes West and Northwest Colorado with its offices located in Grand Junction.
- Region 4 includes Northeast Colorado with its offices located in Greeley.
- Region 5 includes South Central and Southwest Colorado with its offices located in Durango.
- Region 6 includes the Greater Denver Metro area with its offices in Denver.

The Executive Director, the Executive Management Team and the Contracts, Market Analysis Branch, Agreements and Procurement are located at the Headquarters Office. While the main Center for Equal Opportunity is located in Denver at Headquarters, each Region has a Civil Rights Manager who manages the DBE program in each of their Regions.

### **3.1 Methodology of Review**

The following steps were taken to review and summarize CDOT's construction and architectural and engineering (A & E) contracting and purchasing policies, procedures and programs:

- Reviewed CDOT construction and A & E contracting and purchasing manuals, standard specifications, and special provisions currently in place.
- Reviewed CDOT past contracting and construction manuals and policies in effect July 31, 2007, as well as any changes in construction and A & E contracting and purchasing manuals since January 1, 2002.

- Reviewed Policy Directives, as related to contracting and construction, when enacted by the Transportation Commission related to contracting and construction.
- Reviewed Procedural Directives adopted by CDOT related to contracting and construction pursuant to the Policy Directives.
- Reviewed the Stewardship Agreement between CDOT and FHWA dated July 19, 2007.
- Interviewed the Regional Civil Rights Managers.
- Interviewed the CDOT Agreements Unit and the DBE and ESB managers and staff as to what effect the contracting (construction and A & E), DBE and ESB policies, special provisions and manuals have had on the DBE and ESB programs.
- Interviewed key CDOT Agreements personnel to determine how the policies and procedures have been implemented in the past and how they are currently being implemented.
- Reviewed federal and state statutes, regulations, policies and procedures that impact the DBE program or other areas of construction and A & E contracting and purchasing.
- Summarized the CDOT's construction and A & E contracting, ESB and DBE programs and how they effect utilization of DBEs and ESBs by CDOT.

CDOT implements its DBE program pursuant to 49 CFR Part 26. The ESB program is a race-neutral program conducted by CDOT on projects that have state funds or combined state and federal funds. The Wilson Group reviewed the CDOT DBE Program as originally approved by USDOT on April 27, 2000 (and updated annually), as well as the ESB statute and regulations, and the DBE and procurement Policy Directives. We also reviewed the Statewide Standard Specifications and Special Provisions related to the ESB and DBE Programs. Specifically we examined:

- DBE and ESB Programs, including implementation of the Unified Certification Program and outreach activities.
- DBE A&E Special Provisions which set forth the DBE definitions and requirements applicable to federally funded CDOT A&E projects.
- DBE Construction Special Provisions which set forth the DBE requirement applicable to federally funded CDOT construction projects.
- ESB Program Special Provisions which set forth the ESB opportunities and requirements on construction projects.
- ESB Consultant Contract Provision and Forms 1259, 1260, 1261 and 1262, regarding ESB reimbursement on A & E contracts.
- Miscellaneous Forms which are related to the required contract provisions for federal-aid construction contracts, including, among other things, provisions related to equal employment opportunities, nondiscrimination, training and

promotion of minority and women employees, minimum wages and recordkeeping requirements.

We interviewed members of the Civil Rights Offices of CDOT and the Agreements Division, which includes construction and architectural and engineering services. A business survey, personal interviews, public hearings and telephone interviews of both DBE and non-DBE businesses were conducted by the Wilson Group in 2008 and 2009 (see Chapters 4 and 7).

The following sections summarize our review of the applicable law, policies, procedures and practices cited above and the information gathered from the interviews with the CDOT personnel and the DBE, ESB and non-DBE contractors and consultants.

### **3.2 DBE Program**

All CDOT construction and A & E contracts that include federal funding from the United States Department of Transportation (USDOT), including Federal Transit Administration (FTA), Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA), are required to include DBE, equal employment opportunity (EEO) and on the job training (OJT) provisions. Its program is based upon 49 CFR Part 26 and USDOT guidance and interpretations, and on disparity studies prepared in 1998, and updated in 2001. Pursuant to the federal regulations, CDOT has implemented the DBE program through its DBE Program Manual, and its Special Provisions.

CDOT is currently operating under a DBE Program approved by USDOT on April 27, 2000. CDOT has proposed to the USDOT continuing its 2008 goals until this disparity study is complete.

The CDOT Center for Equal Opportunity is centralized at headquarters in Denver. There are sixteen staff members managed by the Center Director. In addition, each Region has a Civil Rights Manager.

As part of their overall duties, the Regional Civil Rights Managers are responsible for DBE construction and consultant project goal setting, contract compliance, OJT and Title VI EEO enforcement.

The DBE Liaison is the Director of the Division of Human Resources and Administration. The Director of the Human Resources and Administration is a member of CDOT's Executive Management Team and has direct, independent access to the Executive Director of CDOT concerning DBE matters.

### **3.3 Unified Certification Program**

In accordance with 49 CFR 26.81, the major recipients of DOT federal funds in Colorado adopted a Colorado Unified Certification Program (CO-UCP), which was approved by USDOT on April 5, 2004. The CDOT Center for Equal Opportunity is one of two certifying agencies for the CO-UCP. Under the approved CO-UCP, the CDOT Center for Equal Opportunity and the City and County of Denver's Division of Small Business Opportunity (DSBO) are the two agencies authorized to certify firms as DBEs. While the main recipients participating in the CO-UCP include Regional Transportation District (RTD), CDOT and the City and County of Denver, there are numerous recipients who are a part of the CO-UCP.

Prior to 2004, CDOT and the City and County of Denver maintained separate DBE directories. Under the CO-UCP, firms previously certified by any one of those agencies were "grandfathered" into one CO-UCP directory. If a firm was certified by CDOT and the City and County of Denver at different times, the agency that had the firm listed with the latest expiration date became responsible for administration of that certified DBE. This has caused confusion with the DBEs at times, for example, CDOT updates its certified DBE list at real time while Denver updates its list weekly or more. The firms certified by the CDOT Center for Equal Opportunity or by the City and County of Denver are the only firms that DOT recipients in Colorado may use to meet their DBE goals.

CDOT certifies DBE firms in accordance with the requirements of 49 CFR Section 26.83. When an SBA 8(a) or SDB certified firm applies for certification pursuant to the DOT/SBA Memorandum Of Understanding (MOU), CDOT follows the procedures outlined in 49 CFR Part 26.84. CDOT only certifies firms whose principal place of business is outside the state of Colorado when the firm is certified in the state in which it maintains its principal place of business and the home state has conducted an on-site interview. However, when another DOT recipient has certified a firm, CDOT requires the applicant to go through CDOT's application process without regard to the action of the other recipient. When a firm whose home state is Colorado is certified as a DBE, CDOT will share its information and documents concerning the firm with other unified certification programs that are considering the firm's application.

CDOT maintains CO-UCP's unified DBE directory for all firms certified by the CO-UCP (including those from other states certified under the provisions of this section) in accordance with the requirements of 49 CFR Part 26.31. The CO-UCP directory is available to the public electronically, on the internet, as well as in print. CO-UCP updates the electronic version of the directory by including additions, deletions, and other changes daily. The CO-UCP directory



includes each firm's name, address, phone number, FAX number, contact person, date of most recent certification, and the types of work the firm has been certified to perform.

As part of the certification, the CDOT Center for Equal Opportunity reviews the CO-UCP Certification Application, the Personal Net Worth of the DBE applicant owner(s) and the Work Category List that allows the DBE applicant to indicate the types of work the DBE is applying for certification. CDOT then performs an interview and an on-site inspection of the DBE applicant. The Certification Application forms are found at: <http://www.dot.state.co.us/EEO/CERTIFICATION/ApplicationForms.htm>.

In making the certification decision, CDOT Center for Equal Opportunity analyzes:

- whether the applicant is a member of a group that is presumed to be disadvantaged
- the size of the firm
- whether the 51% owner and operator of the firm is economically disadvantaged
- whether the 51% owner and operator of the firm has submitted an affidavit of experience of social disadvantage based on race, ethnicity or gender
- whether the firm has shown it is owned and controlled at least 51 percent by a socially and economically disadvantaged person(s)
- whether the firm is at least 51 percent controlled by a socially and economically disadvantaged person(s)

DBE certified firms must file an annual affidavit identifying any changes in the firm over the previous year, and must include the firm's most recent business and the 51 percent owner(s)' most recent personal tax returns. The DBE certified firm must also file a renewal application every three years.

If the CDOT Center for Equal Opportunity denies a request by a firm, which is not currently certified by CDOT or the City and County of Denver, to be certified as a DBE, CDOT follows the procedures outlined in 49 CFR Part 26.86. When CDOT denies a firm's application or decertifies it, the firm may not reapply until 12 months have passed since CDOT's action.

If CDOT proposes to remove a DBE's certification, CDOT follows the procedures outlined in 49 CFR Part 26.87. To ensure separation of functions in a decertification proceeding, CDOT has contracted with an individual outside the Center for Equal Opportunity to serve as hearing officer and decision maker in decertification proceedings. This individual is not involved in initial eligibility determinations or any decision to initiate a decertification proceeding. CDOT notifies all firms, including SBA-certified firms applying pursuant to the DOT/SBA MOU, or complainants, that they have a right to appeal CDOT's decision in a certification matter to DOT. Such appeals may be sent to the U.S. Department of Transportation.

Upon receipt of USDOT certification appeal decisions, CDOT will follow the procedures required by USDOT.

CDOT currently has approximately 825 DBEs certified in its Unified Certification Program. **Table 3-1** shows the number of DBEs that were certified or denied certification during the study period.

**Table 3-1**  
**Number of DBE Certifications and Denials**

State Fiscal Year	New Certifications	Denials
2002 (7/1/2001-6/30/2002)	89	32
2003 (7/1/2002-6/30/2003)	83	38
2004 (7/1/2003-6/30/2004)	43	18
2005 (7/1/2004-6/30/2005)	66	18
2006 (7/1/2005-6/30/2006)	66	15
2007 (7/1/2006-6/30/2007)	43	15
2008 (7/1/2007-6/30/2008)	57	19

### **3.4 Supportive Services**

The CDOT Center for Equal Opportunity provides several forms of supportive services for DBEs and ESBs across the state, including:

- Funding and staffing the Construction Development Center (CDC) which is a center in Central Denver where DBEs and ESBs receive technical assistance and training, and obtain copies of project plans and business information;
- Providing DBEs with assistance in overcoming limitations such as inability to obtain bonding or financing by simplifying the bonding process and providing services to help DBEs, and other small businesses, to obtain bonding and financing;
- Developing and improving immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders;
- Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;
- Providing information in languages other than English, where appropriate;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of

kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

- Focusing on special projects to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of CDOT's DBE directory, through electronic and printable means, to the widest feasible universe of potential prime contractors;
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media;
- Meeting with highway industry organizations to encourage communication between DBEs and the non-DBE members; and
- Orientation training to DBEs and other small businesses.

FHWA has assisted in funding DBE Supportive Services since the beginning of the DBE program, and On-the-Job Training (OJT) Supportive Services since 1998. However, beginning in 2007, the cornerstone of CDOT's supportive services effort is the Business Opportunity and Workforce Development (BOWD) Program. In 2007, FHWA created a pilot BOWD concept that allowed CDOT and 13 other states to combine the two DBE and OJT supportive services in one program and to obtain additional funding. The pilot program focused on 20 DBE firms and its Project Director is a certified DBE. An annual report is required to be filed with FHWA reporting specific items of progress pursuant to the BOWD program.

### **3.5 ESB Program**

The Emerging Small Business (ESB) Program is a race-neutral program that was created by statute in 1991 (C.R.S. § 43-1-106 (8)(j), (k) and (p)(1)). The *Richmond v. Croson* case stated that before a governmental agency can even consider using a race-conscious program, it must first try race-neutral means. The statute gave the Transportation Commission the power to promulgate regulations to establish an emerging small business program which could provide such assistance to eligible small businesses as the Commission determined was necessary, including training, providing technical and business assistance, restricting smaller projects to only eligible small businesses, assisting ESBs in bonding and retainage, and increasing the points for proposal evaluations for utilization of ESBs. The statute was passed to comply with the legal requirement to attempt to cure discrimination, if any, through race-neutral means.

The ESB Program was created to assist all small businesses to access CDOT business opportunities. A business must meet certain criteria to participate as an ESB, including:

- An ESB must be an independent business.

- An ESB must not have exceeded the following total gross income limitations:
  - A total of \$2 million averaged over the past three fiscal years for a business that performs consulting or research work.
  - A total of \$4.5 million averaged over the past three fiscal years for a business that performs construction work.
- A business establishes eligibility by meeting the terms and conditions of the ESB Rules, 2 CCR 604-1, which include:
  - Complete an ESB Initial Eligibility Application.
  - Submit three years Federal Tax returns or an income statement or Federal Tax returns for the period business has existed.
  - Submit proof that a principal has completed at least six hours of class or seminars on small business topics such as taxes, marketing, planning, finance, etc. The seminars include workshops conducted by the Small Business Development Center, CDOT, SBA or chambers of commerce (and can be counted cumulatively to total six hours).

CDOT provides certain assistance to eligible ESBs, such as:

- Financial assistance with bonding up to \$5,000 over 12 years (the maximum time an eligible company can participate in the ESB program);
- Up to \$300 per year reimbursement per ESB firm for half the cost spent on training classes to improve the ability of the business to do business in the transportation industry;
- Access to the CDC to assist ESBs requesting information on Consultant, Contractor and Purchasing procedures and contract opportunities in the transportation industry. The Center has construction plans available for viewing and/checking out; a library of CDOT publications; access to the Internet and information on other CDOT opportunities. CDOT may provide one-on-one assistance or class orientations for ESBs; and
- CDOT places a monthly directory of eligible ESBs in construction and consultant bid proposal packages for prime contractors and consultants.

The ESB Program also provides for payments to prime contractors and consultants when work is subcontracted to eligible ESBs to encourage ESB participation on CDOT projects, such as:

- Payment (up to \$5,000) to a prime contractor or consultant who retains an ESB subcontractor or subconsultant that has never had a contract or subcontract on a CDOT project.
- Payment (up to \$7,500) to a prime contractor or consultant who trains one or more ESB(s) as subcontractor(s) or subconsultant(s) on a CDOT project.
- Reimbursement (up to 5 percent of the ESB subcontractor's award to a maximum of \$5,000) to a prime contractor for costs incurred if the prime had agreed to waive its bonding requirements for the ESB and the ESB subcontractor fails to perform.

In addition, CDOT provides up to 5 evaluation scoring points if the prime consultant is either an ESB or will use an ESB as a subconsultant.

Currently, CDOT has approximately 180 companies listed as eligible ESBs. There are currently, 74 DBEs who are also ESBS. **Table 3-2** shows the number of ESBs during the study period that applied and were found eligible.

**Table 3-2**  
**Number of ESB Applicants and Number of Eligible ESB Applicants**

Year	Applicant Companies	Companies Found to be Eligible ESB
2002	35	30
2003	51	39
2004	40	36
2005	54	48
2006	32	32
2007	29	27
2008	28	24

### **3.5.1 ESB Mentor Protégé Program**

The ESB program has a Mentor Protégé program created in January 2005 that is a joint program with the American Council of Engineering Companies of Colorado (ACEC). The purpose of the Consultant Mentor Protégé Program is to facilitate opportunities for protégés to build business relationships with leaders of major prime consulting companies and ACEC, and to improve the protégés' ability to compete for and be awarded CDOT contracts. Approximately ten eligible ESBs have benefitted from the ESB mentor protégé program. Of the ten ESBs, six were also DBEs.

Protégés may receive managerial and developmental assistance from the program. The assistance could result in significant small business development. Mentors meet with their protégés to assist them with guidance and direction to improve their business operations.

Applicants, including DBEs, who are interested in applying to become a protégé, must submit an application and meet the following eligibility requirements:

- Applicant must be an eligible ESB in CDOT's ESB Program;
- Applicant's firm must have worked on fewer than 10 CDOT projects;
- Applicant must have at least 5 years of experience in its field of service;
- Applicant must submit an updated business plan (so CDOT can evaluate the needs of the protégé);
- Applicant must certify that there are no outstanding tax liens against the business or owners;

- Applicant must indicate their ability to obtain required insurance as specified in the general and special provisions of CDOT contracts; and
- Applicant may be interviewed as part of the selection process.

In order to remain in the Mentor Protégé program, protégés are required to work with mentors and technical support to:

- Complete and sign a Mentor-Protégé Implementation Plan and Partnering Agreement;
- Communicate with the mentor a minimum of 12 hours and a minimum of one face-to-face meeting each quarter;
- Implement goals and plans from the implementation plan and accept suggestions to improve the management/operation of their business;
- Work with the professional service provider and contact them for help when appropriate (if CDOT contracts with a professional service provider);
- Attend educational and training classes suggested by the mentor, and apply for tuition reimbursement within ESB Program; and
- Provide information required by the mentor each quarter. The information will be used to determine if the program is helping the protégé in such areas as working capital, capacity including payroll, total material and overhead expenses, net profit, current certificates for worker compensation and general liability insurances.

Mentors are required to work with their protégé, CDOT and ACEC to:

- Complete and sign a Mentor-Protégé Implementation Plan and Partnering Agreement which includes respecting the confidentiality of their knowledge of their protégé's business operations and finances;
- Review protégé's business plan and implementation plan and provide direction to the protégé and critical steps towards meeting goals;
- Monitor protégé's progress: identify any weaknesses and help refine, update and set deadlines for acting on the business and implementation plans;
- Devote a minimum of 12 hours per quarter communicating with the protégé and a minimum of one face-to-face meeting per quarter with protégé;
- Respond promptly to a protégé's request for advice on significant business problems;
- Help identify the technical or educational services that may assist their protégé to remedy weaknesses;
- Help identify specific barriers to protégé's success and offer advice on best way to achieve success;
- Help develop a relationship with an insurance brokerage firm to begin application process for insurance, if not already in place;
- Maintain a log of protégé's calls and assistance provided;
- Submit a quarterly Mentor Evaluation Form to Sponsors on the progress protégé is making; and

- Discuss topics listed in optional Suggested Topic Guideline for Mentors.

The Mentor Protégé program has a Board that oversees the program with CDOT and ensures that the Mentors and Protégés are complying with the requirements of the program.

### **3.6 Annual Goal Setting**

CDOT updates its annual overall goals annually. CDOT's overall annual goal is based on evidence of the availability of ready, willing, and capable DBEs relative to all businesses ready, willing, and capable to participate on CDOT's contracts for highway construction, design and engineering. Before establishing the overall goal each year, CDOT prepares statistical reports and collects relevant data. CDOT also consults with local minority, majority and women's contracting associations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and CDOT's efforts to establish a level playing field. CDOT also looks at the participation of DBEs and UDBEs on CDOT projects in previous years and at CDOT's budget for the upcoming year.

The annual overall goal is submitted to the Transportation Commission for their approval. In addition to several advertisements and other outreach efforts, a public hearing is held to hear testimony from the contractors, consultants, organizations and citizens regarding the annual goal. Following Commission approval, CDOT publishes a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at CDOT's Center for Equal Opportunity, 4201 E. Arkansas Avenue, Room 200, Denver, CO 80222 for 30 days following the date of the notice, and informing the public that CDOT and the Department will accept comments on the goals for 45 days from the date of the notice. The notice includes addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications.

CDOT's overall goal is set on a fiscal year basis, and is submitted to the FHWA for review by August 1 of each year, unless the Administrator of the concerned OA establishes a different submission date. CDOT's overall goal submission to DOT includes a summary of information and comments received during the public participation process and CDOT's responses as well as the method CDOT used to calculate the goal. If FHWA determines that CDOT's overall goal has not been correctly calculated, or that CDOT's method for calculating goals is inadequate, FHWA may, after consulting with CDOT, adjust the overall goal or require that CDOT do so.

### **3.7 Contract Goals**

As stated in Section 3.2 above, the Regional Civil Rights Managers set contract goals on construction projects and consultant contracts that are reasonable and achievable. [Every year there are some Non-Project Specific contracts that are let or requested by Headquarters, and the Headquarters Center for Equal Opportunity Staff sets the DBE goal for those contracts in the same manner as the Civil Rights Managers, so those contracts are included in this discussion].

For construction projects, the Regional Civil Rights Manager receives from the project manager the project specifications, designs and special provisions and the final estimate (or as close to the final estimate as possible) and a brief description of the project. Based on this information, the Regional Civil Rights Manager identifies the items that DBEs may be able to perform and the reasonableness of the item based on the location of the project work and the mobilization costs, for example, if the cost of the sub-contractible work is low and the cost to the DBEs for mobilization are considerably high, the item will not be included in setting a contract DBE goal.

Once the Regional Civil Rights Manager identifies items that DBEs may be able to perform, the next step is to review the DBEs on the DBE directory that are certified to perform the sub-contractible work and reviews:

- Whether at least 3 DBEs are on the DBE Directory who are able to perform the work (or 2 if only 2 are available);
- Whether the DBEs who are able to perform the work are located in the area of the project; and
- When DBEs are certified to perform more than one item identified as sub-contractible work, whether to include all of the items for the DBE goal.

The Regional Civil Rights Manager then calculates the total of biddable items he/she has used to calculate the goal and divide the amount by the project estimate amount to set the percentage for a potential DBE goal. The Regional Civil Rights Manager may:

- Review the possible goal with the Resident Engineer or project manager;
- Consider the history by prime contractors and DBE participation on other projects in the area;
- Review the bidder's list and the Form 205's (all forms are found on CDOT's DBE website); and
- Make telephone calls to the DBE firms to ensure their availability.

A final DBE goal for the project is then set and a Form 863 which is sent to the Headquarters Center for Equal Opportunity. Form 863 is a confidential document.



The types of contracts that are received by the Regional Civil Rights Managers include construction projects, multiple location projects and local agency projects. The Regional Civil Rights Managers set DBE goals, if any, on the local agency projects.

When the Regional Civil Rights Manager has established a DBE contract goal, CDOT will award the contract only to a prime contractor who meets the goal or who makes good faith efforts to meet the goal. CDOT will determine that a prime contractor has made good faith efforts if the contractor does either of the following:

- a) Documents that it has obtained enough DBE participation to meet the goal with its bid on Form 714; or
- b) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the prime contractor does document adequate good faith efforts, CDOT will not deny award of the contract on the basis that the contractor failed to meet the goal.

CDOT requires that the contractor provide written and signed confirmation on Form 715 from each DBE that it is participating in the contract as provided in the prime contractor's commitment. If the contract goal is not met, the contractor must submit a CDOT Form No. 718 and evidence of good faith efforts to the Center for Equal Opportunity no later than 4:00 p.m. on the day following the bid opening. Examples of good faith efforts are found in Form 718 and in the DBE standards special provisions.

The requirement to identify the UDBEs at the time of bid opening was a change in the construction Special Provisions made by CDOT in January 2006. Prior to September 2004, contractors were not required to identify the UDBEs until the next day after the time of bid opening. From September 2004 through December 2005, CDOT implemented a "pilot program" that requires the contractors to identify their UDBEs at the time of bid opening, and their good faith efforts the day after bid opening. For 14 months prior to the pilot program, 50 percent of the prime contractors met the UDBE goal on the day of bid opening, 24 percent met the UDBE goal the day after bid opening, and 20 percent of the projects were awarded based on good faith efforts. During the pilot program, from September 2004 through December 2005, 87 percent of the prime contractors met the UDBE goal on the day of bid opening and 13 percent of the projects were awarded based on good faith efforts. Because of the data collected during the pilot program, CDOT formally changed the requirement.

Staff of the Center for Equal Opportunity is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. They will ensure that all information is complete and accurate and adequately

documents the bidders' good faith efforts before CDOT commits to the performance of the contract by the bidder.

Within 5 working days of being informed by CDOT that it is not a responsive bidder because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration by the GFE Committee and, ultimately, by the DBE liaison and the Chief Engineer. The DBE liaison and the Chief Engineer reconsideration official(s) will not play any role in the original determination that the bidder did not document sufficient good faith efforts. The bidder should make this request in writing to the GFE Committee.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so to the GFE Committee. The members of the GFE Committee are a project engineer, a member of Headquarters staff services and a Regional Civil Rights Manager. (There are rare exceptions to the membership of the GFE Committee when one of these individuals is not available.) The bidder will have the opportunity to meet in person with CDOT's GFE Committee to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The decision of the GFE Committee is provided to the DBE liaison and the Chief Engineer for a final decision on award or not. CDOT will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not demonstrate adequate good faith efforts to meet the DBE goal. The result of the reconsideration process is not administratively appealable. **Table 3-4** shows the number of good faith efforts granted during the study period.

**Table 3-4**  
**Number of Good Faith Efforts Granted**

<b>Year</b>	<b>No. of Contracts Involved (With DBE Goals)</b>	<b>Contracts Awarded Based on Good Faith Efforts</b>
2002	90	17 GFE's
2003	99	24 GFE's
2004	95	25 GFE's
2005	98	15 GFE's
2006	91	8 GFE's
2007	57	4 GFE's

### **3.8 DBE Compliance and Enforcement**

CDOT has agreed to bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the necessary steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and

Civil Penalties rules) provided in Part 26.109. CDOT also considers similar action under CDOT's own legal authorities, including review of the contractor's prequalification to bid and possible debarment actions.

CDOT has implemented mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). These monitoring and enforcement mechanisms enable CDOT to verify that the work committed to DBEs at contract award is actually performed by the DBEs.

The mechanisms include determining whether a DBE firm is performing a commercially useful function (CUF). If a DBE is not performing a CUF or operates in a manner which is not consistent with the intent of the DBE program, the DBE may be subject to revocation of its DBE certification or CDOT may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations another firm that does not meet the DBE eligibility criteria, CDOT may initiate suspension or debarment proceedings against that firm under 49 CFR part 29.

### **3.9 Architectural and Engineering Policies, Procedures and Programs**

A&E consultants are required to be prequalified by CDOT and must submit the prequalification form annually. If a Region decides they need to solicit an A&E firm instead of performing the design work in-house, they submit a request to the Chief Engineer to obtain approval to hire an A&E consultant.

CDOT then issues a Request for a Statement of Interest/Work Plan (SOI/WP). The selection process for all SOI/WPs issued by CDOT are standardized, including the scoring guidelines. The Region or headquarters, when applicable, prepares a scope of work for the project. Then, the Contracts and Market Analysis Branch prepares the SOI/WP. The scoring criteria for a SOI/WP is:

- Project Team
- Firm Capability
- Past Performance on Similar Projects or Similar Teams
- Work Location
- Capacity
- Project Goals
- Project Control
- Project Concept
- Project Critical Issues

A selection panel is created to evaluate the proposals of the consultants. The panel members are selected by the Regional Engineer where the project is being performed. Each panel member scores each SOI/WP independently. Under the federal Brooks Act, Public Law 92-582, 40 U.S.C. §§ 1101, UetU. UseqU., on contracts involving any federal funds, CDOT is required to select architectural and engineering firms based on qualifications, and then to negotiate a fair and reasonable compensation.

For A&E contracts, whether the contracts are Non-Project Specific (which is the majority of consultant contracts) or Project Specific, the Regional Civil Rights Manager sets the goal in a similar manner, reviewing the work hours estimate for possible areas that can be subcontracted. The Regional Civil Rights Manager identifies items that DBEs may be able to perform and considers the same types of items as construction contracts, except that the location of the DBE is not considered because the location of the engineering or architectural firm is not as important as the location of a construction firm. A Form 863 is prepared and sent to the Headquarters Center for Equal Opportunity.

The Agreements Office scores every SOI/WP for workload factor—each firm is rated from one to five based on how much work the firm has received from CDOT (the more work the firm has received, the lower the score). As part of CDOT's evaluation of which firm is the most qualified, a firm is awarded a maximum of 5 points for UDBE participation and a maximum of 5 points for ESB participation. The Center for Equal Opportunity separately scores every SOI/WP for UDBE participation and ESB participation. Presentations and interviews are optional. The panel then meets and ranks the firms and makes a recommendation to the Chief Engineer.

Each SOI/WP has a UDBE goal. The consultant is required to identify the UDBE participation on project specific contracts on Form 1331 and on non-project specific contracts on Form 1330, except where the UDBE goal is 0%. The consultants are also required to include letters of acceptance from ESB firms they intend to use.

The maximum points a consultant can receive for UDBE participation is 5 points:

- 5 points if the prime consultant is an UDBE

If the prime consultant is not an UDBE, a maximum of 4 points as follows:

- 3 points for meeting or exceeding the UDBE goal
- 1 point for including some UDBE participation but not meeting the UDBE goal
- 1 point for including an UDBE that has received less than 5 CDOT contracts in the past three years
- 0 points for submitting no UDBE participation.

The maximum points a consultant can receive for ESB participation is 5 points:

- 5 points if the prime contractor is an ESB

If the prime consultant is not an ESB, a maximum of 4 points as follows:

- 2 points each for using 1 or more ESBs who have never worked on a CDOT project
- 1 point each for using 1 or more ESBs who have previously worked on a CDOT project
- 0 points for submitting no ESB participation

On complex projects, presentations or interviews with the highest ranked A&E firms are usually held.

After negotiations with the highest ranked consulting team and award of the contract, it is up to the Civil Rights Manager in the Regions to ensure that the prime consultant is meeting the DBE goal and/or ESB commitments. Although CDOT has developed a “prime report card” for both A&E consultants and construction contractors, it has not been implemented to date.

### **3.10 Construction Policies and Procedures**

Construction projects are begun by the project engineer who prepares the plans, specifications and preliminary cost estimate. The Contracts & Market Analysis Branch then prepares the final cost estimate that the Civil Rights Manager uses to set UDBE goals. All CDOT construction contracts that include federal funding from FHWA are required to include UDBE, EEO and OJT provisions.

The Special Provisions for the UDBE Program for construction contracts requires contractors to meet or exceed the UDBE goal and to identify their UDBEs at the time of bid opening. If the contractor does not meet the UDBE goal, it must show that it made a good faith effort (GFE) to meet the goal.

Pursuant to Article 92, Title 24, C.R.S. and CDOT’s Rules for Prequalification, Debarment, Bidding and Work on CDOT, Highway and Bridge Public Projects, 2 CCR 601.10, contractors are required to be prequalified to bid on CDOT projects. The Contracts and Market Analysis Branch Manager or his designee decides whether a contractor meets the prequalification requirements. There are six levels of prequalification at CDOT:

- 1) \$0 to \$600,000
- 2) \$600,000 to \$1,500,000
- 3) \$1,500,000 to \$5,000,000
- 4) \$5,000,000 to \$10,000,000
- 5) \$10,000,000 to \$20,000,000
- 6) >\$20,000,000.

As the level of prequalification increases above the \$1,500,000 level, a letter from the firm's bonding company stating the maximum bond amount for a single project is used to determine the company's prequalification level. If the Contracts and Market Analysis Branch disapproves a contractor's prequalification request, the decision is appealable to the CDOT Chief Engineer, and a hearing before an administrative law judge will be held.

Section 103 of the Standard Specifications requires contractors to submit a contract performance bond and a contract payment bond in the amount of the contract. However, Colorado statutes allow the bond to be "a good and sufficient bond" or other acceptable security approved by the contracting agency "in a penal sum not less than one-half of the total amount payable by the terms of the contract."

Colorado statutes provide that prime contractors must pay their subcontractors within seven calendar days of payment by CDOT if the subcontractor has satisfactorily performed its work. 24-91-103(2), C.R.S. (1991)(the "Prompt Payment Act"). If the contractor fails to timely pay the subcontractor, the subcontractor is entitled to interest on the amount owed to it as specified in the contract or at the rate of 15 percent per annum, whichever is higher. CDOT's Resident Engineers, the Regional Civil Rights Managers and the Center for Equal Opportunity investigate and act on complaints regarding lack of prompt payment. However, there is no written policy on uniform audits of prompt payment to subcontractors. If it is determined that the prime contractor is delinquent, the prime contractor's prequalification to bid on future projects may be suspended.

As part of its outreach efforts, the Center for Equal Opportunity conducts training to inform DBEs and ESBs of their rights under the Prompt Payment Act. In addition, Standard Specification 109 requires compliance with the Prompt Payment Act. While Standard Specification 109 allows the prime contractors to withhold retainage from the subcontractors, it requires the prime contractors to release the retainage within seven days of its determination that the subcontractor has satisfactorily completed its work or to document with specificity the reasons the subcontract work has not been satisfactorily completed and what needs to be done to complete the work. Such determination must be provided to the subcontractor in writing with a copy to the Project Engineer. If the prime contractor fails to comply with Standard Specification 109, the Project Engineer will not authorize further progress estimates until the prime Contractor has made the required payment(s) and agrees to make payments as required in the future.

In addition, Standard Special Provision 108 requires the prime contractor to submit a progress payment schedule that shows the dollar amount that the contractor expects to

complete on a monthly basis for the duration of the project. The payment schedule assists the Resident Engineers, the Regional Civil Rights Managers and the Center for Equal Opportunity in determining whether subcontractors are promptly paid and whether retainage has been promptly released.

### **3.10.1 Innovative Contracting**

In June 2001, CDOT entered into its first design-build contract in partnership with the Regional Transportation District (RTD). The project, T-REX, was a five-year, multi-modal, \$1.2 billion design-build project, approximately one-half of which was funded by CDOT. The CDOT DBE goal was 15 percent and RTD's DBE goal was 15 percent.<sup>F<sup>1</sup>F</sup> The design-build contractor was required to submit a DBE and ESB Performance Plan for CDOT and RTD's approval that estimated how much of the DBE goal it planned to meet each year. The contractor was required to make a good faith effort to meet its DBE goals each year, and to submit a corrective action plan if it fell behind in meeting its DBE goals. If the contractor met the DBE goal or made a good faith effort to meet the goal each year, the contractor was awarded an incentive and an equal amount was awarded to small business programs that benefit transportation projects. On the T-REX project, approximately \$187 million was awarded to DBE subcontractors (approximately half of which was CDOT funds). The contractor did not meet the 15 percent DBE goal, but CDOT and RTD determined that the contractor had made a good faith effort to meet the goal over the 5-year project period. However, the last year of the project, the contractor did not receive any incentive money.

After the T-REX project, CDOT's second design-build project was a \$130 million interstate widening project in Colorado Springs—the COSMIX project entered into on February 25, 2005 and was completed December 31, 2007. The COSMIX project had a 10.7 percent DBE goal and the contractor made a Good Faith Effort to meet the goal, meeting a seven (7) percent DBE participation. Both the T-REX project and the COSMIX project were reported to FHWA separately from CDOT's annual DBE reports during the study period because the projects were so large. CDOT has since conducted one design-build project and it used the traditional construction design-bid-build DBE and ESB Special Provisions. CDOT has three pending design-build projects and it has not yet made a determination of whether it will require a DBE and ESB Performance Plan or use the traditional construction design-bid-build DBE and ESB Special Provisions.

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<sup>1</sup> FHWA and FTA could not agree on a method to allow CDOT and RTD to have one DBE goal on the T-REX project.

Other innovative construction contracts that were outlined in 2006 in CDOT's Innovative Contracting Guidelines include construction management at risk, lane rental, A + B bidding, liquidated incentives, phased funding, multiple bid schedules, modified design-build contracts, emergency contracts, warranty contracts, value engineering contracts and indefinite delivery/indefinite quantity contracts. For a description of each of these innovative types of contracting. The only innovative types of contracting that would not require the Project Engineer to include the CDOT DBE and ESB Special Provisions are emergency contracts.

### **3.11 Transit**

The Transit Unit of CDOT administers the funds provided through the Federal Transit Administration (FTA). It works closely with eligible recipients of FTA funds, including rural, specialized and public transit operators, providing management and planning assistance. The Transit Unit also promotes transit alternatives to highways. The Transit Unit receives federal funds for rural public transportation (a population of under 50,000) and small urbanized areas and conducts a statewide competitive application process for these funds.

As an FTA recipient, the Transit Unit requires that each transit vehicle manufacturer, as a condition of being authorized to bid on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of 49 CFR §26.49. CDOT sets a race-neutral annual DBE goal (see Table 3.1), but does not include FTA assistance used in vehicle procurements in calculating its annual goal.



## **CHAPTER 4.0 – AVAILABILITY ANALYSIS**



## **CHAPTER 4.0 – AVAILABILITY ANALYSIS**

Availability provides one of the most critical elements for assessing how equitable public contracting has been in the past. In essence, availability analysis predicts number of firms in the relevant market area and the capacity of those firms to provide the services needed by public organizations.

This section of the report discusses the results of our analysis of firm availability. By utilizing secondary data of firms that potentially could do work for the State, an estimate of those qualified, willing, and able is created. In order to further validate the results of the analysis, primary data collected through the marketplace survey process is utilized. Based on evidence of past success in performing work at certain levels, firms are judged to be qualified, willing, and able for future contract and bid opportunities. Specifically, our analysis includes a discussion of our approach and methodology, results of our estimations by relevant category, and a break out of results by subcontract work code. The CDOT work codes for construction and consulting included in the study appear below:

<b>Construction Work Codes</b>	<b>Consultant Codes</b>
Asphalt (HBP)	Acoustical Engineering
Concrete Pavement Roadway	Architecture
Construction Surveying	Bridge Design
Culverts	Bridge Inspection
Curb, Gutter, Sidewalk Inlets	Civil Engineering
Drilling Holes	Electrical Engineering
Earthwork	Environmental Engineering
Electrical and Signal Items	Environmental Expert Witness
Guard Rail	Environmental / Hazmat
Landscaping	Geological Engineering
Minor Fencing, Chain Link, Barbed Wire	Geotechnical Engineering
Miscellaneous	Highway & Street Design
Painting	Hydraulics
Pavement Maintenance	Landscape Architecture
Planning, Milling	Management (Contract Admin)
Plumbing, Heating, Mechanical	Management (Construction)
Seal Coat and Asphaltic Materials	Materials Testing
Seeding, Topsoil, Erosion Control	Mechanical Engineering
Signing	Sanitary Engineering
Steel	Soils Engineering
Storm Drain System	Structural Engineering
Structural Concrete	Surveying
Testing	Traffic Engineering
Traffic Control	Transportation Engineering
Trucking and Hauling	Tunneling
Walls	Value Engineering
Waterproofing	

#### 4.1 Approach

Current case law provides little direct guidance on how to measure the degree of availability of a firm. As the courts weighed in more on the availability issue, the emphasis has been more of what was not right with the current methodologies rather than a more tutorial discussion of methodologies that would pass legal muster.

Social scientists have developed several approaches to attempt to meet the threefold criterion: qualified, willing, and able. The most prevalent practices occupy the extremes of the analytical spectrum. At the most conservative extreme, only firms that are included in bidder, vendor, and certification records of the reviewed organization represent all available firms. The most liberal estimates would include all firms that are recognized by the US Census or a similar estimating organization as being present within the relevant market area regardless of size, interest, workload, or even status.

More recently, most disparity study methodologies have sought “middle ground” between the two extremes with varying degrees of success. A variety of secondary data sources have been utilized to estimate the population of the firms working in the relevant market and industry segment areas and based on this data a sample of primary data has been collected. The move away from bidder, vendor, and certification data solely has created opportunities for additional analysis as well as challenges. The greatest opportunity afforded by the analytical change is the ability to more precisely determine which firms are available in the relevant market, but have not been recognized as such. Conversely, the challenges arise from the actual benefit: how do you determine if a firm is available if it has not expressed a documentable effort to participate in the past. Another issue that has grown in importance relates to the impact of business relationships as it relates to working as a prime contractor or subcontractor. In essence, if a firm is available to work as a subcontractor, at what point does it become available to work as a prime contractor. Given CDOT specific requirements for prime contractors, a firm only can become a prime by completing the prequalification process. This reduces the complexity of analysis, but creates an additional barrier to participation.

On December 16, 2005, the United States Commission on Civil Rights conducted a “briefing to gather facts so that it could better evaluate the methodological and empirical strength and quality of these seminal efforts and subsequent disparity studies, which in part form the foundation of affirmative action in federal contracting.”<sup>1</sup> As a result of the briefing, several recommendations were made regarding disparity studies and the methodologies used

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<sup>1</sup> *Disparity Studies as Evidence of Discrimination in Federal Contracting*, A Briefing Before the United States Commission on Civil Rights Held in Washington, D.C. December 16, 2005, published May 2006, pg. 77.

to gather empirical evidence. Of particular note with regard to availability analysis are the following points:

- Recommendation 3: Researchers must develop explicit rationale for including businesses in the availability measure as qualified, willing and able to carry out contract work. Their work should compare only businesses that are able to perform the same services. Analysts should remove from the pool of available businesses any companies offering services that a government does not purchase or that are distinctively different.
- Recommendation 6: Analysts should use measures of available firms that account for the businesses' capacity to perform work. At a minimum, they should examine disparity ratios by size of business. For example, instead of contrasting small minority businesses with all other firms, researchers should compare them to other small businesses. Yet, categorizing businesses as small, medium, and large is only a weak measure of capacity. The research should attempt to include additional and more fine-tuned measures of capacity, such as revenue, number of employees, or the firm's payroll.
- Recommendation 8: Similarly, utilization and availability measures, that are numerators and denominators, must represent the same time period to avoid any distortion from changes in the composition of the business community.

These recommendations are factored into our methodology through the use of specific criteria for availability determination taking into account capability based on elements of past success being predictive of future success. In addition, the widest sample is drawn by including M/W/DBEs.

## **4.2 Methodology**

Several major data collection and analysis efforts were undertaken based on our approach to develop the list of available firms. First, an assessment of secondary data was completed to identify potential data sources. The following databases were collected:

- Colorado Department of Transportation Certified DBEs
- Colorado Department of Transportation ESB Directory
- Colorado Department of Transportation Bidders' Loop Vendors
- Colorado Department of Transportation Prequalified Construction Vendors
- Colorado Department of Transportation Prequalified Consultant Vendors
- Dun and Bradstreet Colorado Firm Database (2008)

Based on these secondary sources, a master availability database was created of firms that indicated an interest in performing work for the Colorado Department of Transportation by registering their firm with one or more of the source agencies listed on the next page. The database was further verified by comparisons to other databases created for the anecdotal data collection and identification of available CDOT work codes listed on page 4-1.

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The universe of potentially available firms included 11,518 unique organizations. A breakdown of the source and counts for each source appears below.

Source	Count
Bidder Loop Vendors	768
CDOT Certified DBE & ESBs	925
CDOT Prime & Sub Contract Data	3178
Dun and Bradstreet Database	6647
Total	11,518

The source agencies do not maintain time-phased lists of registrants in most cases. Therefore, the availability analysis in this report assumes that firms included in the master database were viable businesses that continued operations in the same line(s) of business throughout the study period as indicated in the database.

An argument could reasonably be made that other businesses not listed in the source agency registration lists were actually available to provide goods and services. In other words, the overall pool of firms should be higher than reflected herein and there is some validity to that argument. However, concern about unduly inflating the basis for availability precluded an upward adjustment in our methodology to determine available firms.

Subsequent to compiling the list of firms, filtering criteria were developed in order to extract a subset of potentially available firms from the overall pool of firms (master availability database). The filter results and rationale for removal appear below by category. Each of the removed firms fell outside of the included CDOT work codes or the relevant geographic market area covered by this study. The final numbers for construction and consulting appear at the bottom of the table.

Reason for Removal	Count
Address Unknown	41
Airport Services	10
Amusement	7
Animal Care	1
Appraisal Services	2
Association	6
Bail Bonds	1
Building Contractor	1
Catering	2
Chamber of Commerce	1
Conference	2
County Agency	3
Drug Company	1
Duplicate	1860
Educational	11
Financial Services	22
Food Services	33
Government Agency	12
Ground Transportation	5
Insurance Agency	10

Reason for Removal	Count
Jewelry	2
Medical Services	37
Musician	1
Non Profit	27
Personal Care	3
Real Estate	69
Single Family Construction	57
Social Services	2
State Agency	1
Tax Services	6
Title Insurance	13
Transportation	10
Travel Agency	5
Wireless	1
Outside of Market Area	741
Not Analyzed due to Work Codes not used by CDOT	6,109
<b>Construction Final</b>	<b>4,079</b>
<b>Consulting Final</b>	<b>1,396</b>

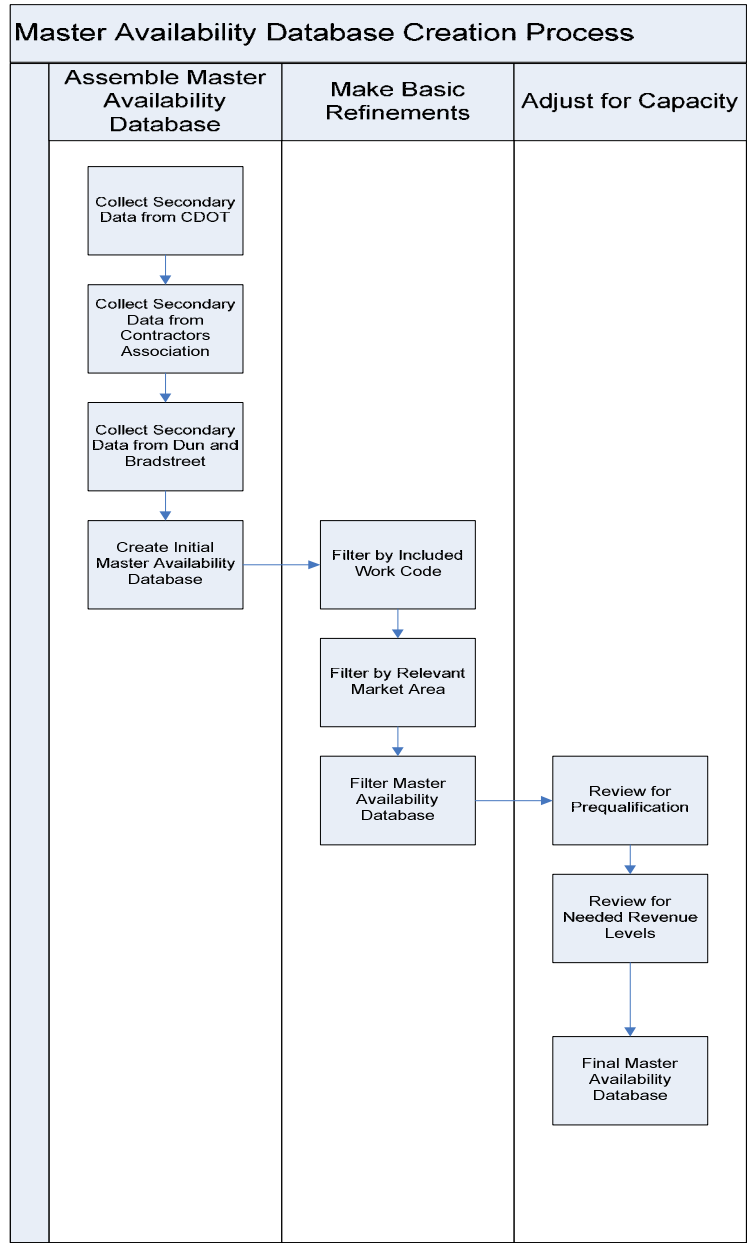
An online survey of approximately 465 completions provided additional empirical evidence to assess not only firm qualifications, willingness and availability; but also provided a means to determine firm capacity. The online survey sample was drawn from federal, state and municipal government resources that had databases containing contact information on Colorado businesses. Key agencies, such as the U.S. Small Business Administration, CDOT, RTD, City and County of Denver, Denver Economic Development Council, Colorado Small Business Development Centers, regional Chambers of Commerce and local business and community organizations were contacted regarding available databases and email address sources. Additionally, a list of participants from the 1998 CDOT Disparity Study was added to the master database. The total number of email contacts collected for notification of the survey was 7,490. One of the purposes of the survey was to assess availability potential of firms to provide services to CDOT and to verify conclusions drawn from secondary data.

Additional details on the sampling methodology and results appear in Chapter 7.0. The methodology used to evaluate firm eligibility for inclusion in the final sample of available firms included several steps. Key elements of that methodology were:

- Prequalification or registration with Colorado Department of Transportation for prime contractors.
- The determination of subcontractor distribution in the master availability database considered the revenue and staffing levels of working firms in the marketplace.

The master availability database was verified by a review of the online survey respondents. The survey data was not utilized to reduce the master availability database, but did serve as a method of confirming previously collected information.

The graphic below summarizes the steps taken and described previously to create the final master availability database.



### 4.3 Results

**Table 4-1** shows the number and relative distribution of construction firms included for initial analysis of availability and groups that data by business owner classification. Similarly, **Table 4-2** shows the number and relative distribution of consultant services firms included in the initial analysis.

**Table 4-1  
Total Construction Firms by  
Owner Classification**

African American	Native American	Asian American	Hispanic American	Other Minority	Nonminority Women	Total M/W/DBEs	Nonminority	Total
102	36	30	311	171	390	1,040	3,039	4,079
2.50%	0.88%	0.74%	7.62%	4.19%	9.56%	25.50%	74.50%	100.00%

**Table 4-2  
Total Consultant Services Firms by  
Owner Classification**

African American	Native American	Asian American	Hispanic American	Other Minority	Nonminority Women	Total M/W/DBEs	Nonminority	Total
39	19	64	87	74	280	563	833	1,396
2.79%	1.36%	4.58%	6.23%	5.30%	20.06%	40.33%	59.67%	100.00%

Almost 75 percent of construction firms and 60 percent of consultant services firms in the master availability database were owned by nonminority males. Woman-owned, non-minority firms represented ten percent of construction and 20 percent of consulting service firms in the database. The analysis by individual business category shows that there were higher percentages of minority and woman-owned firms in consulting services than in construction over all.

**Tables 4-3** and **4-4** provide the results of the analysis of the adjusted prime contractors/consultants in construction and consultant services, respectively. As mentioned earlier, CDOT utilizes a prequalification process for all prime contractors/consultants. As a result, if a firm was going to be completely qualified, ready, and willing, it would need to have completed the process. Consequently, there is not an estimate of those that would be potentially available since the current process specifically prescribes the required, pre-qualification process. Observations show similar patterns to the overall master availability database distribution in terms of the groupings of firms. That is to say, nonminority-owned firms



account for approximately 70 percent of available firms, woman-owned firms follow in terms of the next largest group, and Hispanic-owned firms are next in succession.

**Table 4-3**  
**Prequalified Prime Contractors**

African American	Native American	Asian American	Hispanic American	Other Minority	Nonminority Women	Total M/W/DBEs	Nonminority	Total
5	4	4	25	10	66	114	257	371
1.35%	1.08%	1.08%	6.74%	2.70%	17.79%	30.73%	69.27%	100.00%

**Table 4-4**  
**Prequalified Prime Consultant Distribution**

African American	Native American	Asian American	Hispanic American	Other Minority	Nonminority Women	Total M/W/DBEs	Nonminority	Total
5	1	17	18	13	45	99	254	353
1.42%	0.28%	4.82%	5.10%	3.68%	12.75%	28.05%	71.95%	100.00%

The following charts (**Tables 4-5** and **4-6**) show the results of the analysis of available subcontractors and subconsultants. We identified the number of firms that possess similar revenue and staffing characteristics to those that have performed work in the past for CDOT based on the actual CDOT utilization data. This approach mirrors the 2001 update study and continues the assumption that if a firm has done business with CDOT in the past as a subcontractor, then the revenue level of that firm is predictive of capacity of another firm that is seeking to perform work. For construction firms, the contract values for subcontractors range between \$11,700 and \$57,341,470. The reported revenue levels taken from secondary data sources for these firms are between under \$500,000 through maximum revenue of \$499,999,999. The calculation cannot be more precise since revenue data is not available in actual amounts instead of ranges. Consulting firm capacity analysis produces similar results. Sub-consultant contracts range from \$126 to \$5,456,305 based on the CDOT utilization data. The revenue of firms receiving these contracts ranges between under \$500,000 to a maximum of \$99,999,999.

Generally speaking, prime contractors/consultants can perform work as subcontractors/subconsultants and may be more inclined to consider subcontract/subconsultant work in tight economic conditions. We did not presuppose a firm’s willingness to perform work as a subcontractor/subconsultant. Responses provided during the online survey interviews

were utilized to further qualify the results. As a result, some firms included in the prime level analysis were also included in the subcontractor/subconsultant analysis if there were online survey participants who indicated a willingness to work on either level. In addition, some firms may not be interested in doing work with CDOT. The results of the survey indicate that 31.6 percent of Asian-owned, 43.8 percent of Black-owned, 64.3 percent of Hispanic-owned, 33.3 percent of Native American-owned, 51.6 percent of White Women-owned, and 34.7 percent of White Male-owned would be willing to work as a sub-contractor on a CDOT project (see Exhibit 7-12). A larger percentage in most cases would be willing to serve as a sub or prime contractor in working for CDOT. The most relevant result for determining availability would be the percentage of firms that would be unwilling to perform any type of work for CDOT. Respondents indicate that 5.3 percent of Asian-owned, 8.3 percent of Black-owned, 5.4 percent of Hispanic-owned, 5.6 percent of Native American-owned, 8.2 percent of White Women-owned, and 8.3 percent of White Male-owned would not be doing work for CDOT. Given the size of the sample and the low level of disinterest, it was concluded that the differentials should not be applied to the adjusted availability results except in cases where direct linkages existed between the online survey response and master availability databases. This adjustment impacted less than ten organizations.

To summarize, firms are included in the adjusted availability numbers if they possess revenue data that supports the revenue characteristics of those that received contracts from CDOT in the past. If a firm does not have revenue data it is not considered since the characteristic can not be confirmed.

Approximately 77 percent of available construction subcontractors are nonminority while approximately 55 percent of consultant service firms. Available nonminority female owned firms are about three times greater in consultant services than construction.

**Table 4-5**  
**Adjusted Construction Subcontractors**

<b>African American</b>	<b>Native American</b>	<b>Asian American</b>	<b>Hispanic American</b>	<b>Other Minority</b>	<b>Nonminority Women</b>	<b>Total M/W/DBEs</b>	<b>Nonminority</b>	<b>Total</b>
61	21	14	189	127	227	639	2,227	2,866
2.13%	0.73%	0.49%	6.59%	4.43%	7.92%	22.30%	77.70%	100.00%

**Table 4-6  
Adjusted Subconsultants**

<b>African American</b>	<b>Native American</b>	<b>Asian American</b>	<b>Hispanic American</b>	<b>Other Minority</b>	<b>Nonminority Women</b>	<b>Total M/W/DBEs</b>	<b>Nonminority</b>	<b>Total</b>
22	16	38	58	54	203	392	483	874
2.52%	1.83%	4.35%	6.64%	6.18%	23.23%	44.74%	55.26%	100.00%

**CHAPTER 5.0 – CONSTRUCTION  
DATA COLLECTION, RELEVANT MARKET AREA,  
UTILIZATION AND DISPARITY ANALYSES**



## CHAPTER 5.0 – CONSTRUCTION DATA COLLECTION, RELEVANT MARKET AREA, UTILIZATION AND DISPARITY ANALYSES

This Chapter provides an overview of our analysis of the federally funded highway contracting activity occurring during the period of January 1, 2002 through December 31, 2007 for the Colorado Department of Transportation (CDOT). We will also define CDOTs relative market areas and analyze the utilization of firms available.

### 5.1 Data Collection and Management

This section describes the data parameters and the process utilized to collect and manage the data used in this study.

#### **Business Categories**

This study analyzed the spending patterns of CDOT to determine the business categories of purchases made during the study period and the relevant market areas. Business categories were defined utilizing CDOTs Subcontractor Work Codes. Procurements were assigned to one of the following business categories:

#### **Construction**

WORK CODES	WORK CODES DESCRIPTION
1	Asphalt (HBP)
2	Concrete Pavement Roadway
3	Construction Surveying
4	Culverts
5	Curb Gutter Sidewalk Inlets
6	Drilling Holes
7	Earthwork
8	Electrical & Signal Items
9	Guard Rail
10	Landscaping
11	Minor Fencing, Chain Link, Barbed Wire
12	Miscellaneous
13	Painting (not Pavement Marking)
14	Pavement Marking
15	Planing, Milling
16	Plumbing, Heating, Mechanical
17	Seal Coat & Asphaltic Materials
18	Seeding, Topsoil, Erosion Control
19	Signing
20	Steel
21	Storm Drain System
22	Structural Concrete
23	Testing

**Construction (continued)**

WORK CODES	WORK CODES DESCRIPTION
24	Traffic Control
25	Trucking, Hauling
26	Walls
27	Waterproofing

**Disadvantaged Business Enterprises (DBEs)**

Title 49, Part 26 of the Code of Federal Regulations defines a disadvantaged business enterprise as a firm with at least 51 percent ownership and control by a DBE from one of seven subgroups: African Americans, Native Americans, Asian Americans, Hispanic Americans, non-minority Women and Other DBEs. **However, for the analysis of a disparity study, DBE firms include firms that are certified and non-certified minority and women-owned businesses.** These groups are defined in Appendix A. Firm classification was determined based on data provided by the CDOT, City and County of Denver, Dun and Bradstreet and telephone and/or personal interviews that were conducted by the Wilson Group.

CDOT and the City of Denver recognize DBE certifications as valid for the other entity under an agreement of reciprocity in a program called the Uniform Certification Program (UCP). The UCP was approved in August 2005. Prior to this, each Agency maintained its own DBE certification data. For the time period of January 2002 through August 2005, CDOT and the City of Denver provided separate DBE tables; for September 2005 through December 2007, CDOT provided tables containing data for CDOT and Denver. All tables were combined to provide a master DBE table of certified DBEs during the study period. The master DBE table contained the following values:

- Certification Number
- Company Name
- FEIN #
- Street
- City
- State
- Zip
- Contact Person
- Phone Number
- Fax Number
- Email Address
- Certification Date
- Expiration Date
- Woman Owned
- Ethnicity
- Work Codes

## **Data Collection**

A Data Acquisition Work Plan was developed, presented and approved by CDOT's key staff members. Interviews were conducted with Business Managers in each of the six (6) regions, headquarters, Information Technology Office (ITO), Center for Equal Opportunity Office (EEO), Contracts and Agreements Office, Audit Office and the Central Files Section. Sample data was initially retrieved and the Wilson Group met with the resource most knowledgeable with the data type to ensure data integrity and acquisition focus. A combination of desktop digital databases, archival legacy systems and extensive paper files were used to acquire the necessary study data. The data acquired targeted construction contractors who had pre-qualified to enter into contracts with CDOT, prime contractors (construction) that had received contracts during the study period, subcontractors who had contracted with prime contractors, companies generally statewide that were available to compete for CDOT contracts, DBEs and minority and women owned businesses that could compete to provide highway construction or consultant services. During the months of February 2008 through July 2008 electronic and hardcopy data were retrieved from CDOT.

### **Prequalification Data**

Section 24-103-402 C.R.S. provides that companies that wish to contract as prime contractors or prime consultants on CDOT highway projects must be pre-qualified. The pre-qualification process is managed by CDOT's Contracts and Agreements Office. Successfully pre-qualified companies are authorized to seek CDOT contracts for twelve contiguous months and must reapply for prequalification each year.

A paper file is kept on each pre-qualification applicant and is controlled by CDOT's Contracts and Agreements Office. The current year and two previous years' application data files are maintained in this office. Older files are stored in CDOT's archival area in the CDOT Headquarters building.

Contracts and Agreements Office also maintains a Microsoft Access database of current year pre-qualified companies. However, as the same company is pre-qualified thereafter, the previous data is written over. Therefore, no archived records of active companies are kept in the database.

The Wilson Group reviewed all current and all archived paper files on each pre-qualification application archived from January 2002 through June 2007 for Construction. From this information a master demographic table and a separate master prequalification table was created for construction related companies. The following information is contained in the Prequalification Table:

**Construction Prequalification Table**

<b>Construction Demographic Table</b>	<b>Construction Prequalification Table</b>
Company Name	Company Name
Phone #	Vendor #
Fax #	FEIN#
Address 1	Owner/Contact Name
Address 2	Pre-qualified Date
City	Pre-qualified Expiration Date
State	Construction Work Codes
Zip Code	Specialty Work Codes
Email	Incidental Work Codes
Owner/Contact Name	Bonding Limit
FEIN#	Woman or Minority Owned
Vendor #	DBE Expiration Date
Work Type	ESB Expiration Date
	Owner Ethnicity
	Owner Gender

Although gender and ethnicity were requested on the prequalification application, many did not report it. The Wilson Group used prior pre-qualification archived digital tables to complement the paper files and fill in missing ethnic and gender data to the extent data was available. In addition, CDOTs DBE tables were utilized to populate the DBE fields in the pre-qualification tables as a supplement to the file data. The Wilson Group believes that the data obtained and provided is very comprehensive and inclusive of all prequalifications that occurred during the study period.

Demographic tables contain the most current company data and are comprised of all companies that pre-qualified for CDOT contracts during the study period.

**Prime Contractors**

Data on prime contractors who received CDOT contracts is maintained in CDOTs Site Manager mainframe contract management software. Data on subcontractors contracted by primes is similarly housed in Site Manager. The Wilson Group received comprehensive payout and contract tables from CDOT for all awards during the study period from this software. Site Manager is administered in CDOTs Staff Services section. The following data were provided for prime contractors and subcontractors:



**Construction Prime and Subcontractor Data**

<b>Construction Prime Contractor</b>	<b>Subcontractors</b>
• Company Name	• Company Name
• FEIN#	• FEIN #
• Vendor ID	• Vendor ID
• Region	• Address
• DBE Status	• City
• ESB Status	• State
• Gender	• Zip
• Ethnicity	• Region
• Work Code	• Phone
• Project Number	• Fax
• Contract ID	• Email
• DBE Goal Percent	• DBE Status
• Project Description	• ESB Status
• Prime Award Date	• Gender
• Prime Award Bid Amount	• Ethnicity
• Project Completion Date	• Work Code
• Total Paid to Date	• Project Number
	• Sub Approval Date
	• Prime Contractor
	• Subcontract Amount
	• Contract Completion Date
	• Form 17 Recorded
	• Amount Paid to Subcontractor

Support tables to further complement pre-qualification and award tables included contractor work and subcontractor codes and descriptions. Also included is the prime contract current earnings table.

A contract database was compiled using the above mentioned sources. Based on the parameters of the study that were discussed with the client’s contract manager, certain contracts were excluded from further analysis. Reasons for exclusion include contracts that were:

- Out of the Study Period – the study period for construction included activity occurring January 2002 through June 2007.
- State Funded – the study included only federally funded contracts.

**Master Vendor Data**

The Wilson Group utilized the National Minority Suppliers Network and CDOTs Bidder’s Loop database to compile a master table of companies with business profiles and work codes that could apply for business with CDOT. The Wilson Group also requested minority Chamber of Commerce directories for the study time period but received minimal response. The CDOT Bidder’s Loop, initiated in 2003, is an online system that enables companies interested in CDOT contracts to enter their company information to receive information on potential bid

opportunities. The National Minority Suppliers Network is a directory of minority and woman owned companies with a variety of services and products. From the directory, companies with work codes related to highway construction or consulting (A&E) were combined with the Bidder's Loop directory to produce the Master Vendor table. The Master Vendor table contains the following:

- Company Name
- Address
- City
- State
- Zip Code
- Region
- Phone
- Contact/Owner
- Email
- Ethnicity
- Gender
- Certification
- Work Type/Codes
- Sales
- Year Established

## **5.2 Market Area Analysis**

The geographic market area methodology was initially established through anti-trust case law and has been required by Court decisions, beginning with *Richmond v. Croson*, for business disparity studies.

The accepted methodology for determining the geographic market area is the area that includes the location of prime contractors who received 75 percent of CDOT's contract dollars. In the case of CDOT, firms located in Colorado were awarded over 96 percent of the contract dollars.

The significance of the relevant market area is that further analysis within the context of this study will focus primarily on activity occurring within the state of Colorado. The relevant market area is defined below for the business category of Construction.

### **Construction**

During the study period, CDOT expended over \$1.63 billion on Construction contracts with businesses in the relevant market area, utilizing 106 individual firms on 594 contracts. Firms located in the State of Colorado received over 96 percent of the total Construction contract dollars awarded during the study period. **Table 5-1** presents dollar amounts,

percentage of contracts and percentage of firms utilized for CDOTs relevant market area; the State of Colorado. The utilization, availability and disparity analyses will use only the Construction contracts included in the relevant market area.

**Table 5-1**  
**Construction**  
**Relevant Market Area**  
**Colorado Department of Transportation**  
**Calendar Years 2002 – 2007**

	<b>State of Colorado</b>
<b>Total Dollars</b>	\$1,635,918,584
<b>Percent of Dollars</b>	96.93%
<b>Percent of Contracts</b>	96.27%
<b>Percent of Firms Utilized</b>	91.38%

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007

### **5.3 Prime Contractor Utilization Analysis - Construction**

The Wilson Group conducted utilization analyses of all M/W/DBE and non-M/W/DBE construction prime contractors utilized during the study period. The definition of M/W/DBE firms includes **all minority or woman-owned business whether or not they are certified as a DBE.**

The following are the results of the prime contractor utilization analysis for Construction:

#### **5.3.1 Construction**

The utilization analysis of prime contractors for Construction projects is shown in **Table 5-2**. During the study period, the CDOT awarded over \$1.63 billion federally funded construction contracts. M/W/DBEs were awarded over \$83.4 million or 5.10 percent of the total federal prime contracting dollars expended by the CDOT for Construction projects.

The M/W/DBE firms most utilized as prime contractors were owned by Hispanic Americans, receiving over \$33.2 million, or 2.04 percent; followed closely by nonminority Women owned firms, receiving over \$33.0 million or 2.02 percent of the construction contracts awarded. One African American firm received one contract during the study period for \$148,321 or .01 percent of the total prime construction contract dollars.

The utilization analysis also shows that during the period of January through June 2007, M/W/DBE participation was the highest based on the total percentage of federal dollars expended. During this time period, M/W/DBEs received over \$10.6 million or 6.51 percent of the total construction dollars expended by the CDOT.

**Table 5-2  
Construction  
Prime Contractor Utilization  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Calendar Year	African Americans	Native American	Asian American	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Total Non-M/W/DBEs	Total Dollars Awarded
2002	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$8,066,638 2.70%	\$5,851,239 1.96%	\$13,917,877 4.67%	\$284,370,311 95.33%	\$298,288,188
2003	\$0 0.00%	\$1,345,868 0.48%	\$0 0.00%	\$5,100,222 1.82%	\$7,344,532 2.62%	\$13,790,622 4.93%	\$266,217,951 95.07%	\$280,008,573
2004	\$148,321 0.05%	\$0 0.00%	\$0 0.00%	\$13,199,280 4.42%	\$2,768,465 0.93%	\$16,116,066 5.40%	\$282,383,922 94.60%	\$298,499,987
2005	\$0 0.00%	\$5,628,548 2.38%	\$164,111 0.07%	\$1,896,165 0.80%	\$6,106,884 2.59%	\$13,795,708 5.84%	\$222,375,301 94.16%	\$236,171,009
2006	\$0 0.00%	\$0 0.00%	\$5,457,428 1.52%	\$2,075,680 0.58%	\$7,660,669 2.13%	\$15,193,777 4.23%	\$344,174,372 95.77%	\$359,368,150
2007	\$0 0.00%	\$3,238,445 1.98%	\$1,126,094 0.69%	\$2,959,986 1.81%	\$3,327,816 2.03%	\$10,652,340 6.51%	\$152,930,337 93.49%	\$163,582,678
<b>Total</b>	\$148,321 0.01%	\$10,212,861 0.62%	\$6,747,633 0.41%	\$33,297,971 2.04%	\$33,059,604 2.02%	\$83,466,390 5.10%	\$1,552,452,194 94.90%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## **5.4 Subcontractor Utilization - Construction**

The Wilson Group conducted utilization analyses of all M/W/DBE and non-M/W/DBE construction subcontractors during the study period.

The following are the results of the subcontractor utilization analysis for Construction:

### **5.4.1 Construction**

The utilization analysis of subcontractors for Construction projects is shown in **Table 5-3**. During the study period, the CDOT awarded over \$1.63 billion federally funded prime construction contracts. Prime contractors awarded over \$633.4 million or 38.72 percent of the total contract dollars in subcontracts. M/W/DBE subcontractors were awarded over \$187.8 million or 11.48 percent of the total federal dollars expended by the CDOT for Construction projects.

The M/W/DBE firms most utilized as subcontractors were owned by non-minority Women, receiving over \$118.4 million, or 7.24 percent; followed by Hispanic American owned firms, receiving over \$55.6 million or 3.40 percent of the construction contract dollars awarded. One (1) Other M/W/DBE firm owned by a disabled veteran was awarded one (1) subcontract totaling \$95,000 or 0.01 percent of the total contract dollars awarded.

The subcontractor utilization analysis also shows that during the period of January through June 2007, M/W/DBE participation was the highest based on the total percentage of federal dollars expended. During this time period, M/W/DBE subcontractors received over \$20.9 million or 12.83 percent of the total construction dollars expended by the CDOT.

**Table 5-3  
Construction  
Subcontractor Utilization  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

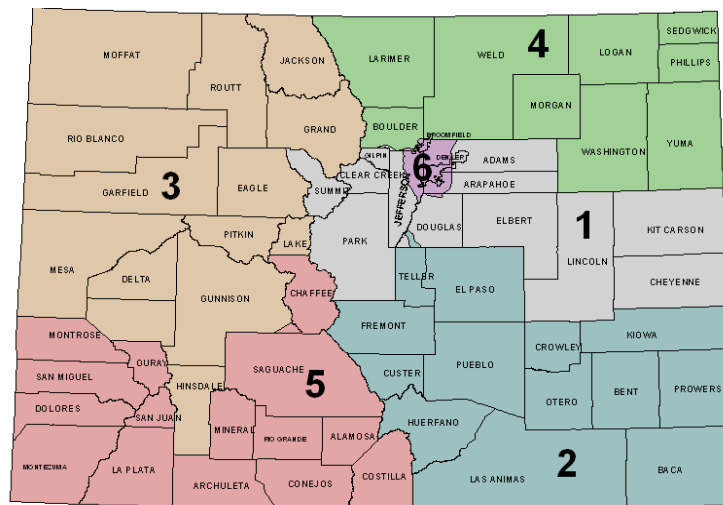
Calendar Year	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Other M/W/DBEs	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
2002	\$911,574 0.31%	\$975,322 0.33%	\$490,614 0.16%	\$9,185,304 3.08%	\$18,929,728 6.35%	\$0 0.00%	\$30,492,542 10.22%	\$93,237,869 31.26%	\$298,288,188
2003	\$1,364,771 0.49%	\$252,240 0.09%	\$380,928 0.14%	\$7,274,812 2.60%	\$19,791,559 7.07%	\$0 0.00%	\$29,064,308 10.38%	\$74,238,600 26.51%	\$280,008,573
2004	\$1,718,953 0.58%	\$462,046 0.15%	\$353,089 0.12%	\$8,432,656 2.83%	\$22,758,982 7.62%	\$95,000 0.03%	\$33,820,726 11.33%	\$86,445,444 28.96%	\$298,499,987
2005	\$1,352,309 0.57%	\$94,721 0.04%	\$1,173,623 0.50%	\$7,534,977 3.19%	\$18,730,623 7.93%	\$0 0.00%	\$28,886,253 12.23%	\$49,646,392 21.02%	\$236,171,009
2006	\$1,037,288 0.29%	\$329,689 0.09%	\$582,682 0.16%	\$17,442,819 4.85%	\$25,197,949 7.01%	\$0 0.00%	\$44,590,428 12.41%	\$108,047,068 30.07%	\$359,368,150
2007	\$105,917 0.06%	\$1,676,366 1.02%	\$441,766 0.27%	\$5,750,189 3.52%	\$13,018,554 7.96%	\$0 0.00%	\$20,992,791 12.83%	\$33,983,992 20.77%	\$163,582,678
<b>Total</b>	\$6,490,812 0.40%	\$3,790,385 0.23%	\$3,422,701 0.21%	\$55,620,757 3.40%	\$118,427,394 7.24%	\$95,000 0.01%	\$187,847,048 11.48%	\$445,599,365 27.24%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## 5.5 Colorado Department of Transportation Regional Utilization Analyses



Source: Colorado Department of Transportation, Regional Map

As stated previously in Chapter 3, the Colorado Department of Transportation is organized, conducts business and provides services to six (6) Regions and a Headquarters located in Denver.

- Region 1 includes Central Colorado, Vail Pass to Kansas, except the Denver Metro area with its office located in Aurora.
- Region 2 includes Southeast Colorado with its office located in Pueblo.
- Region 3 includes West and Northwest Colorado with its offices located in Grand Junction.
- Region 4 includes Northeast Colorado with its offices located in Greeley.
- Region 5 includes South Central and Southwest Colorado with its offices located in Durango.
- Region 6 includes the Greater Denver Metro area with its offices in Denver.

**Exhibit 5-4** shows that of the total federal dollars awarded by the CDOT during the study period over \$223.6 million or 13.67 percent were awarded in Region 1, of which M/W/DBEs received approximately 6.8 million or 3.08 percent; over \$333.4 million or 20.38 percent were awarded in Region 2, of which M/W/DBEs received approximately 8.8 million or 2.66 percent; over \$247.9 million or 15.16 percent were awarded in Region 3, of which M/W/DBEs received approximately \$18.9 million or 7.63 percent; over \$283.5 million or 17.33 percent were awarded in Region 4, of which M/W/DBEs received approximately \$5.3 million or 1.87 percent; over \$163.9 million or 10.03 percent were awarded in Region 5, of which M/W/DBEs received approximately \$10.7 million or 6.58 percent and over \$383.2 million or 23.43 percent were awarded in Region 6, of which M/W/DBEs received approximately \$32.7 million or 8.53 percent.

**Table 5-4  
Construction  
Prime Contractor Utilization \_All Regions  
Percentage of Total Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

REGIONS	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
REGION 1	\$0 0.00%	\$0 0.00%	\$2,562,384 1.15%	\$392,973 0.18%	\$3,924,423 1.75%	\$6,879,780 3.08%	\$216,809,461 96.92%	\$223,689,241
REGION 2	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$6,517,204 1.95%	\$2,358,247 0.71%	\$8,875,451 2.66%	\$324,553,726 97.34%	\$333,429,177
REGION 3	\$148,321 0.06%	\$8,866,993 3.58%	\$2,544,225 1.03%	\$0 0.00%	\$7,350,945 2.96%	\$18,910,484 7.63%	\$229,069,301 92.37%	\$247,979,785
REGION 4	\$0 0.00%	\$1,345,868 0.47%	\$48,230 0.02%	\$387,653 0.14%	\$3,525,272 1.24%	\$5,307,022 1.87%	\$278,250,987 98.13%	\$283,558,009
REGION 5	\$0 0.00%	\$0 0.00%	\$1,592,795 0.97%	\$0 0.00%	\$9,195,386 5.61%	\$10,788,180 6.58%	\$153,211,112 93.42%	\$163,999,293
REGION 6	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$26,000,142 6.78%	\$6,705,331 1.75%	\$32,705,472 8.53%	\$350,557,607 91.47%	\$383,263,080
<b>Total</b>	\$148,321 0.01%	\$10,212,861 0.62%	\$6,747,633 0.41%	\$33,297,971 2.04%	\$33,059,604 2.02%	\$83,466,390 5.10%	\$1,552,452,194 94.90%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.



The overall results of the Regional analysis for prime contractors shows the Regions with the highest M/W/DBE prime contractor participation based on the percent of total dollars awarded were:

- Region 6 – 8.53%
- Region 3 – 7.63%
- Region 5 – 6.58%
- Region 1 – 3.08%
- Region 2 – 2.66%
- Region 4 – 1.87%

**Exhibit 5-5** presents the utilization analysis of M/W/DBE subcontracts awarded for each Region:

Of the total federal dollars awarded by the CDOT during the study period M/W/DBE participation totaled over \$25.8 million or 11.54 percent in Region 1, over \$36.2 million or 10.87 percent in Region 2, over \$27.4 million or 11.98 percent in Region 3, over \$34.0 million or 12.02 percent in Region 4, over \$15.3 million or 9.34 percent in Region 5 and over \$48.8 million or 12.75 percent in Region 6.

The overall results of the Regional analyses for subcontractors shows that the Regions with the highest M/W/DBE subcontractor participation based on the percent of total dollars awarded were:

- Region 6 – 12.75%
- Region 4 – 12.02%
- Region 1 – 11.54%
- Region 3 – 11.08%
- Region 2 – 10.87%
- Region 5 – 9.34%

A detailed analysis of prime and subcontractor M/W/DBE participation for each Region is presented in Appendix I.

**Table 5-5  
Construction  
Subcontractor Utilization\_ All Regions  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 - 2007**

REGIONS	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Other M/W/DBEs	Total M/W/DBEs	Total Dollars Awarded
REGION 1	\$578,375 0.26%	\$477,604 0.21%	\$800,226 0.36%	\$6,928,978 3.10%	\$17,039,709 7.62%	\$0 0.00%	\$25,824,893 11.54%	\$223,689,241
REGION 2	\$126,046 0.04%	\$661,297 0.20%	\$624,109 0.19%	\$14,391,037 4.32%	\$20,429,958 6.13%	\$0 0.00%	\$36,232,447 10.87%	\$333,429,177
REGION 3	\$678,786 0.27%	\$638,764 0.26%	\$641,770 0.26%	\$5,715,857 2.30%	\$19,808,210 7.99%	\$0 0.00%	\$27,483,388 11.08%	\$247,979,785
REGION 4	\$1,282,328 0.45%	\$151,613 0.05%	\$175,450 0.06%	\$8,806,661 3.11%	\$23,586,628 8.32%	\$95,000 0.03%	\$34,097,680 12.02%	\$283,558,009
REGION 5	\$48,172 0.03%	\$1,655,801 1.01%	\$219,432 0.13%	\$4,052,510 2.47%	\$9,349,301 5.70%	\$0 0.00%	\$15,325,215 9.34%	\$163,999,293
REGION 6	\$3,777,105 0.99%	\$205,306 0.05%	\$961,713 0.25%	\$15,725,714 4.10%	\$28,213,588 7.36%	\$0 0.00%	\$48,883,425 12.75%	\$383,263,080
<b>Total</b>	\$6,490,812 0.40%	\$3,790,385 0.23%	\$3,422,701 0.21%	\$55,620,757 3.40%	\$118,427,394 7.24%	\$95,000 0.01%	\$187,847,048 11.48%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## 5.6 M/W/DBE and Non-M/W/DBE Prime and Subcontractor Utilization

In order to determine the actual contract dollars retained by M/W/DBE and non-M/W/DBE prime and subcontractors, the Wilson Group utilized the following methodology:

- Analyzed each contract and determined total dollars retained by M/W/DBE and non-M/W/DBE prime and subcontractors (Appendix D-28 – D-45).
- For each contract, prime and subcontractor dollars were combined into M/W/DBE and non-M/W/DBE categories.

Formula of calculations for prime and subcontractors:

Prime Contract Award \$ (M/W/DBE & non-M/W/DBE) - Subcontractor \$ (M/W/DBE & non-M/W/DBE) = Prime and Subcontractor Retainage \$ (M/W/DBE & non-M/W/DBE)

Example of contract retainage M/W/DBE prime:

M/W/DBE Prime Contract Award	\$1,000
Subcontractor 1 (M/W/DBE)	\$100
Subcontractor 2 (M/W/DBE)	\$175
Subcontractor 3 (non-M/W/DBE)	\$275

M/W/DBE Prime \$1,000 – M/W/DBE Sub 1 \$100 – M/W/DBE Sub 1 \$175 – non-M/W/DBE Sub 3 \$275= M/W/DBE Retainage = \$725 and non-M/W/DBE retainage = \$275

Example of contract retainage non-M/W/DBE prime:

Non-M/W/DBE Prime Contract Award	\$1,000
Subcontractor 1 (M/W/DBE)	\$100
Subcontractor 2 (M/W/DBE)	\$175
Subcontractor 3 (non-M/W/DBE)	\$275

Non-M/W/DBE Prime \$1,000 – M/W/DBE Sub 1 \$100 – M/W/DBE Sub 1 \$175 – non-M/W/DBE Sub 3 \$275= M/W/DBE Retainage = \$275 and non-M/W/DBE retainage = \$725

Using the above methodology, The Wilson Group determined the amount of total dollars awarded and calculated the percentage of dollars retained by M/W/DBEs and non-M/W/DBEs for the entire study period. **Table 5-6** shows that of the total federally funded Construction contract dollars awarded, M/W/DBEs retained over \$200.1 million or 12.24 percent and non-M/W/DBEs retained over \$1.4 billion or 87.76 percent.

**Table 5-6**  
**Construction Utilization Analysis**  
**Prime and Subcontractor Utilization\_M/W/DBE and Non-M/W/DBE**  
**Colorado Department of Transportation**  
**Calendar Years 2002 – 2007**

Utilization Summary	Dollars Awarded	% of Dollars
Total M/W/DBE Dollars	\$200,187,959	12.24%
Total Non-M/W/DBE Dollars	\$1,435,730,625	87.76%
Total Dollars Award	\$1,635,918,584	100%

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

### **5.7 Prime Contractor Utilization Threshold Analyses - Construction**

For further comparison of M/W/DBE utilization, the Wilson Group conducted a threshold analysis of Construction prime contractor contracts awarded by the CDOT. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of \$500,000 or less
- Contracts in the amount of \$500,001 to \$1,000,000
- Contracts in the amount of \$1,000,001 to \$5,000,000
- Contracts in the amount of \$5,000,001 to \$10,000,000
- Contracts over \$10,000,000

**Table 5-7** shows the threshold analysis conducted of the 594 Construction prime contracts awarded by the CDOT. M/W/DBEs received 76 or 12.80 percent of the prime contracts awarded and 5.10 percent of the contract dollars. The most successful groups were non-minority Women owned firms receiving 46 or 7.74 percent of the contracts and 2.02 percent of the dollars; followed by Hispanic Americans, receiving 18 or 3.03 percent of the contracts awarded and 2.04 percent of the dollars. The following is a breakdown of M/W/DBE participation:

- A total of 130 prime contracts were awarded in the dollar range of \$500,000 or less. M/W/DBEs received 38 or 29.23 percent of the contracts awarded and 28.90 percent of the dollars. The successful groups were non-minority Women owned firms, receiving 26 or 20.00 percent of the contracts and 21.22 percent of the dollars; followed by Hispanic American owned firms, receiving 7 or 5.38 percent of the contracts and 4.99 percent of the dollars. Native American owned firms did not receive any of the contracts awarded in this dollar range.

- A total of 85 prime contracts were awarded in the dollar range of \$500,001 to \$1 million. M/W/DBEs received 11 or 12.94 percent of the prime contracts awarded in this dollar range and 11.62 percent of the dollars. The only successful groups were non-minority Women owned firms, receiving 10 or 11.76 percent of the contracts and 10.46 percent of the dollars; an Asian American firm, received one (1) or 1.18 percent of the contracts and 1.16 percent of the dollars. African American, Native American and Hispanic American owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 298 prime contracts were awarded in the dollar range of \$1,000,001 to \$5 million. M/W/DBEs received 25 or 8.39 percent of the contracts awarded in this dollar range and 6.23 percent of the dollars. The successful groups were Hispanic American owned firms, receiving 10 or 3.36 percent of the contracts and 2.48 percent of the dollars; followed closely by non-minority Women receiving 10 or 3.36 percent of the contracts and 2.46 percent of the dollars; followed by Asian American owned firms, receiving 3 or 1.01 percent of the contracts and .0.69 percent; followed by Native American owned firms, receiving 2 or 0.67 percent of the contracts and 0.63 percent of the dollars. African American owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 57 prime contracts were awarded in the dollar range of \$5,000,001 to \$10 million. M/W/DBEs received 1 or 1.75 percent of the contracts awarded in this dollar range and 1.49 percent of the dollars. The one contract was awarded to a Native American owned firm.
- A total of 24 prime contracts were awarded in the dollar range of over \$10 million. M/W/DBEs received 1 or 4.17 percent of the contracts awarded in this dollar range and 3.12 percent of the dollars. The one contract was awarded to a Hispanic American owned firm.

**Table 5-7  
Construction  
Prime Contractor Utilization Threshold  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
\$500,000 or Less	\$148,321	\$0	\$924,274	\$1,986,269	\$8,452,558	\$11,511,421	\$28,326,374	\$39,837,795
# of Contracts	1	0	4	7	26	38	92	130
<b>Percent of Dollars</b>	<b>0.37%</b>	<b>0.00%</b>	<b>2.32%</b>	<b>4.99%</b>	<b>21.22%</b>	<b>28.90%</b>	<b>71.10%</b>	
<b>Percent of Contracts</b>	<b>0.77%</b>	<b>0.00%</b>	<b>3.08%</b>	<b>5.38%</b>	<b>20.00%</b>	<b>29.23%</b>	<b>70.77%</b>	
\$500,001 to \$1,000,000	\$0	\$0	\$753,599	\$0	\$6,820,459	\$7,574,058	\$57,621,520	\$65,195,578
# of Contracts	0	0	1	0	10	11	74	85
<b>Percent of Dollars</b>	<b>0.00%</b>	<b>0.00%</b>	<b>1.16%</b>	<b>0.00%</b>	<b>10.46%</b>	<b>11.62%</b>	<b>88.38%</b>	
<b>Percent of Contracts</b>	<b>0.00%</b>	<b>0.00%</b>	<b>1.18%</b>	<b>0.00%</b>	<b>11.76%</b>	<b>12.94%</b>	<b>87.06%</b>	
\$1,000,001 to \$5,000,000	\$0	\$4,584,313	\$5,069,761	\$18,112,422	\$17,786,587	\$45,553,083	\$685,760,690	\$731,313,773
# of Contracts	0	2	3	10	10	25	273	298
<b>Percent of Dollars</b>	<b>0.00%</b>	<b>0.63%</b>	<b>0.69%</b>	<b>2.48%</b>	<b>2.43%</b>	<b>6.23%</b>	<b>93.77%</b>	
<b>Percent of Contracts</b>	<b>0.00%</b>	<b>0.67%</b>	<b>1.01%</b>	<b>3.36%</b>	<b>3.36%</b>	<b>8.39%</b>	<b>91.61%</b>	
\$5,000,001 to \$10,000,000	\$0	\$5,628,548	\$0	\$0	\$0	\$5,628,548	\$371,145,009	\$376,773,557
# of Contracts	0	1	0	0	0	1	56	57
<b>Percent of Dollars</b>	<b>0.00%</b>	<b>1.49%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>1.49%</b>	<b>98.51%</b>	
<b>Percent of Contracts</b>	<b>0.00%</b>	<b>1.75%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>1.75%</b>	<b>98.25%</b>	
Above \$10,000,000	\$0	\$0	\$0	\$13,199,280	\$0	\$13,199,280	\$409,598,601	\$422,797,881
# of Contracts	0	0	0	1	0	1	23	24
<b>Percent of Dollars</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>3.12%</b>	<b>0.00%</b>	<b>3.12%</b>	<b>96.88%</b>	
<b>Percent of Contracts</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>4.17%</b>	<b>0.00%</b>	<b>4.17%</b>	<b>95.83%</b>	
<b>Total</b>	<b>\$148,321</b>	<b>\$10,212,861</b>	<b>\$6,747,633</b>	<b>\$33,297,971</b>	<b>\$33,059,604</b>	<b>\$83,466,390</b>	<b>\$1,552,452,194</b>	<b>\$1,635,918,584</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## 5.8 Subcontractor Utilization Threshold Analyses - Construction

For further comparison of M/W/DBE utilization, the Wilson Group conducted a threshold analysis of Construction subcontracts awarded by the CDOT. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of \$150,000 or less
- Contracts in the amount of \$150,001 to \$350,000
- Contracts in the amount of \$350,001 to \$750,000
- Contracts in the amount of \$750,001 to \$1,000,000
- Contracts in the amount of \$1,000,001 to \$5,000,000
- Contracts above \$5,000,000

**Table 5-8** shows the threshold analysis conducted of the 5,590 Construction subcontracts awarded during the study period. M/W/DBEs received 1772 or 31.70 percent of the subcontracts awarded and 29.66 percent of the dollars. The most successful groups were non-minority Women owned firms, receiving 1152 or 20.61 percent of the subcontracts and 18.70 percent of the dollars; followed by Hispanic American owned firms, receiving 428 or 7.66 percent of the subcontracts awarded and 8.78 percent of the dollars. The following is a breakdown of M/W/DBE participation:

- A total of 4,587 subcontracts were awarded in the dollar range of \$150,000 or less. M/W/DBEs received 1402 or 30.56 percent of the subcontracts in this dollar range and 35.94 percent of the dollars. The most successful groups were non-minority Women owned firms, receiving 910 or 19.84 percent of the subcontracts and 22.48 percent of the dollars; followed by Hispanic American owned firms, receiving 326 or 7.11 percent of the subcontracts and 9.80 percent of the dollars.
- A total of 651 subcontracts were awarded in the dollar range of \$150,001 to \$350,000. M/W/DBEs received 269 or 41.32 percent of the subcontracts and 41.10 percent of the dollars. The most successful groups were non-minority Women owned firms, receiving 180 or 27.65 percent of the subcontracts and 27.65 percent of the dollars; followed by Hispanic American owned firms, receiving 68 or 10.45 percent of the subcontracts and 10.40 percent of the dollars; followed by African American owned firms, receiving 14 or 2.15 percent of the contracts and 2.05 percent of the dollars; followed by Native Americans, receiving 4 or 0.61 percent of the contracts and 0.57 percent of the dollars; followed by Asian American owned firms, receiving 3 or 0.46 percent of the contracts and 0.43 percent of the dollars.

**Table 5-8  
Construction  
Subcontractor Utilization Threshold  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Other M/W/DBEs	Total M/W/DBEs	Non-M/W/DBEs	Total Dollars Awarded
\$150,000 or Less	\$2,518,291	\$1,078,376	\$2,388,996	\$16,291,273	\$37,356,402	\$95,000	\$59,728,338	\$106,449,472	\$166,177,810
# of Subcontracts	70	31	64	326	910	1	1,402	3,185	4,587
Percent of Dollars	1.52%	0.65%	1.44%	9.80%	22.48%	0.06%	35.94%	64.06%	
Percent of Subcontracts	1.53%	0.68%	1.40%	7.11%	19.84%	0.02%	30.56%	69.44%	
\$150,001 to \$350,000	\$3,036,742	\$842,530	\$637,272	\$15,366,790	\$40,874,823	\$0	\$60,758,156	\$87,058,255	\$147,816,411
# of Subcontracts	14	4	3	68	180	0	269	382	651
Percent of Dollars	2.05%	0.57%	0.43%	10.40%	27.65%	0.00%	41.10%	58.90%	
Percent of Subcontracts	2.15%	0.61%	0.46%	10.45%	27.65%	0.00%	41.32%	58.68%	
\$350,001 to \$750,000	\$935,779	\$384,864	\$396,433	\$13,275,615	\$23,830,986	\$0	\$38,823,677	\$74,383,951	\$113,207,628
# of Subcontracts	2	1	1	26	48	0	78	146	224
Percent of Dollars	0.83%	0.34%	0.35%	11.73%	21.05%	0.00%	34.29%	65.71%	
Percent of Subcontracts	0.89%	0.45%	0.45%	11.61%	21.43%	0.00%	34.82%	65.18%	
\$750,001 to \$1,000,000	\$0	\$0	\$0	\$2,633,367	\$5,780,141	\$0	\$8,413,508	\$37,530,813	\$45,944,321
# of Subcontracts	0	0	0	3	7	0	10	44	54
Percent of Dollars	0.00%	0.00%	0.00%	5.73%	12.58%	0.00%	18.31%	81.69%	
Percent of Subcontracts	0.00%	0.00%	0.00%	5.56%	12.96%	0.00%	18.52%	81.48%	
\$1,000,001 to \$5,000,000	\$0	\$1,484,615	\$0	\$8,053,712	\$10,585,042	\$0	\$20,123,370	\$113,777,399	\$133,900,768
# of Subcontracts	0	1	0	5	7	0	13	57	70
Percent of Dollars	0.00%	1.11%	0.00%	6.01%	7.91%	0.00%	15.03%	84.97%	
Percent of Subcontracts	0.00%	1.43%	0.00%	7.14%	10.00%	0.00%	18.57%	81.43%	
Above \$5,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$26,399,476	\$26,399,476
# of Subcontracts	0	0	0	0	0	0	0	4	4
Percent of Dollars	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	
Percent of Subcontracts	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	
<b>Total</b>	<b>\$6,490,812</b>	<b>\$3,790,385</b>	<b>\$3,422,701</b>	<b>\$55,620,757</b>	<b>\$118,427,394</b>	<b>\$95,000</b>	<b>\$187,847,048</b>	<b>\$445,599,365</b>	<b>\$633,446,413</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.



- A total of 224 subcontracts were awarded in the dollar range of \$350,001 to \$750,000. M/W/DBEs received 78 or 34.82 percent of the subcontracts and 34.29 percent of the dollars. The most successful groups were non-minority Women owned firms, receiving 48 or 21.43 percent of the subcontracts and 21.05 percent of the dollars; followed by Hispanic American owned firms, receiving 26 or 11.61 percent of the subcontracts and 11.73 percent of the dollars; followed by African American owned firms, receiving 2 or 0.89 percent of the contracts and 0.83 percent of the dollars. Asian American and Native American owned firms each received 1 contract or 0.45 percent of the contracts and 0.35 and 0.34 percent of the dollars.
- A total of 54 subcontracts were awarded in the dollar range of \$750,001 to \$1 million. M/W/DBEs received 10 or 18.52 percent of the subcontracts and 18.31 percent of the dollars. The only successful groups were nonminority Women owned firms, receiving 7 or 12.96 percent of the subcontracts and 12.58 percent of the dollars; followed by Hispanic American owned firms, receiving 3 or 5.56 percent of the subcontracts and 5.73 percent of the dollars.
- A total of 70 subcontracts were awarded in the dollar range of \$1,000,001 to \$5 million. M/W/DBEs received 13 or 18.57 percent of the subcontracts and 15.03 percent of the dollars. The most successful groups were non-minority Women owned firms, receiving 7 or 10.00 percent of the subcontracts and 7.91 percent of the dollars; followed closely by Hispanic American owned firms, receiving 5 or 7.14 percent of the subcontracts and 6.01 percent of the dollars; followed by Native American owned firms, receiving 1 or 1.43 percent of the subcontracts and 1.11 percent of the dollars. African American and Asian American owned firms did not receive any of the subcontracts in this dollar range.
- M/W/DBE owned firms did not receive any of the 4 subcontracts awarded in the above \$5 million dollar range.

## **5.9 Goal Analyses - Construction**

The Federal Highway Administration requires CDOT to submit an annual M/W/DBE goal. It also requires that CDOT carefully analyzes each contract to determine the availability of M/W/DBE firms based on the specific type of work. In **Table 5-9**, the Wilson Group conducted an analysis of goals assigned to Construction contracts awarded by the CDOT (a full list of contracts is presented in Appendix D-82 to D-113). For the 594 contracts awarded during the study period, the contract goal amount was determined by multiplying the contract award amount by the estimated project goal assigned to each contract. The M/W/DBE achieved participation amount for these contracts were then determined by combining actual M/W/DBE subcontract dollars awarded to each contract. This amount was then divided by the contract award amount to determine the achieved M/W/DBE participation percentage for each contract. It is important to note that CDOT assigned its contract goals based on certified M/W/DBE firms.

As stated earlier, the definition of M/W/DBEs used in this report include certified and non-certified minority or woman-owned businesses.

During the study period, the CDOT estimated an M/W/DBE goal for Construction contracts of approximately \$131 million or 8.01 percent of the contract dollars awarded. The achieved M/W/DBE participation was over \$187 million or 11.48 percent of the total Construction dollars expended. Below is a summary by calendar year of the estimated and achieved M/W/DBE participation for Construction contracts awarded by the CDOT.

**Table 5-9**  
**M/W/DBE Project Goal Utilization Analysis**  
**Calendar Year Summary 2002 – 2007**

<b>Fiscal Year</b>	<b>Annual M/W/DBE Goal</b>	<b>Total Contract Dollars Awarded</b>	<b>Assigned M/W/DBE Contract Goal</b>	<b>Projected M/W/DBE Goal in Dollars</b>	<b>Achieved M/W/DBE Participation</b>	<b>Achieved M/W/DBE Participation in Dollars</b>
2002	10.93%	\$298,288,188	6.75%	\$20,147,863	10.22%	\$30,492,542
2003	10.93%	\$280,008,573	7.33%	\$20,526,292	10.38%	\$29,064,308
2004	12.99%	\$298,499,987	9.65%	\$28,811,857	11.33%	\$33,820,726
2005	11.79%	\$236,171,009	8.04%	\$18,996,034	12.23%	\$28,886,253
2006	12.19%	\$359,368,150	8.72%	\$31,352,978	12.41%	\$44,590,428
2007	13.76%	\$163,582,678	6.87%	\$11,242,089	12.83%	\$20,992,791
<b>Totals</b>		<b>\$1,635,918,584</b>	<b>8.01%</b>	<b>\$131,077,114</b>	<b>11.48%</b>	<b>\$187,847,048</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses

The overall results of this analysis presented in **Table 5-10** shows that of the 594 Construction contracts awarded, 517 or 87.04 percent of the contracts were assigned a M/W/DBE goal and 77 or 12.96 percent of the contracts did not have a M/W/DBE goal assigned.

Contracts awarded with an assigned M/W/DBE goal totaled over \$1.5 billion or 97.01 percent of the total dollars expended on Construction projects. Of this amount, M/W/DBEs received over \$183 million or 11.55 percent of the contracts awarded with assigned goals. The total amount of contracts awarded that did not have an assigned M/W/DBE goal was over \$48.9 million or 2.99 percent of the total dollars expended. Of this amount, M/W/DBEs received over \$4.5 million or 9.28 percent of the contracts awarded that did not have an assigned goal.

**Table 5-10  
 Construction  
 M/W/DBE Project Goal Utilization Analysis  
 Colorado Department of Transportation  
 Calendar Years 2002 – 2007**

Fiscal Year	Total # of Contracts w/ Goals	Total Contract Dollars Awarded w/Goals	Percent of M/W/DBE Participation on Contracts w/Goals	M/W/DBE Participation in Dollars	Total # of Contracts w/out Goals	Total Contract Dollars Awarded w/out Goals	Percent of M/W/DBE Participation on Contracts w/out Goals	M/W/DBE Participation in Dollars
2002	89	\$285,970,376	10.23%	\$29,251,379	15	\$12,317,813	10.08%	\$1,241,163
2003	96	\$270,463,887	10.38%	\$28,083,954	9	\$9,544,686	10.27%	\$980,354
2004	94	\$291,355,351	11.49%	\$33,487,167	15	\$7,144,637	4.67%	\$333,559
2005	96	\$229,657,588	12.33%	\$28,312,495	14	\$6,513,421	8.81%	\$573,759
2006	88	\$351,339,788	12.41%	\$43,610,248	15	\$8,028,361	12.21%	\$980,179
2007	54	\$158,151,826	13.00%	\$20,557,791	9	\$5,430,852	8.01%	\$435,000
<b>Total</b>	<b>517</b>	<b>\$1,586,938,815</b>	<b>11.55%</b>	<b>\$183,303,034</b>	<b>77</b>	<b>\$48,979,769</b>	<b>9.28%</b>	<b>\$4,544,014</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.  
 Note: Total dollars awarded may not equal the total due to rounding  
 DBEs include certified and non-certified minority and women

**5.10 Goal Analyses – Construction – Top 10 Prime Contractors**

The Wilson Group also conducted an M/W/DBE goal analysis of the top ten (10) prime Construction contractors utilized. During the study period, of the 594 contracts awarded by CDOT, ten (10) prime contractors were awarded 184 contracts or 31 percent of the total contracts. The total amount of these contracts was over \$850 million or 52 percent of the total federally funded construction dollars expended by the CDOT. The overall results of this analysis presented in **Table 5-11** shows that of the 184 construction contracts awarded, 176 or 95.65 percent were assigned a M/W/DBE goal and eight (8) or 4.35 percent of the contracts did not have a M/W/DBE goal assigned.

Of the contracts assigned an M/W/DBE goal, M/W/DBE firms were awarded over \$87.6 million or 10.42 percent of the contract dollars awarded. The total amount of contracts awarded that did not have an assigned M/W/DBE goal was over \$10.3 million or 1.22 percent of the total contract dollars awarded. Of this amount, M/W/DBE participation was \$838,316 or 8.07 percent of the contract dollars that did not have an assigned goal.

The analysis shows that of the eight (8) prime contracts awarded without goals, M/W/DBE owned firms were utilized as subcontractors on six (6) of the contracts. It also shows that the prime contractors utilized M/W/DBE owned firms at almost the same rate as contracts with assigned goals.

**Table 5-11  
Construction  
M/W/DBE Project Goal Utilization Analysis  
Top 10 Prime Contractors  
Colorado Department of Transportation  
Calendar Years Summary 2002 - 2007**

Top 10 Prime Contractors	Total # of Contracts	Total Contract Dollars Awarded	DBE Aggregated Goal	Projected DBE Aggregated Goal Amount	Actual M/W/DBE Participation Achieved	Actual M/W/DBE Participation Amount Achieved	Total # of Contracts w/ Goals	Total Contract Dollars Awarded w/Goals	Total M/W/DBE Dollars	Percent of Total Contract Dollars w/Goals Awarded to M/W/DBEs	Total # of Contracts w/out Goals	Total Contract Dollars Awarded w/out Goals	Total # of Contracts Awarded to M/W/DBEs	Total M/W/DBE Dollars	Percent of Total Contract Dollars w/out Goals Awarded to M/W/DBEs
1	29	82,406,998	7.70%	\$6,343,052	11.37%	\$9,366,100	28	\$81,530,353	\$9,328,349	11.44%	1	\$876,645	1	37,751	4.31%
2	22	78,356,712	9.28%	\$7,269,910	10.26%	\$8,037,185	22	\$78,356,712	\$8,037,185	10.26%	0	\$0	0	0	0.00%
3	11	50,737,699	11.57%	\$5,871,973	20.43%	\$10,367,290	11	\$50,737,699	\$10,367,290	20.43%	0	\$0	0	0	0.00%
4	14	51,189,215	4.50%	\$2,305,212	13.51%	\$6,915,588	11	\$45,606,390	\$6,221,244	13.64%	3	\$5,582,825	3	694,344	12.44%
5	7	55,006,375	10.19%	\$5,605,317	14.75%	\$8,112,525	7	\$55,006,375	\$8,112,525	14.75%	0	\$0	0	0	0.00%
6	9	67,285,883	9.44%	\$6,352,053	6.29%	\$4,234,997	9	\$67,285,883	\$4,234,997	6.29%	0	\$0	0	0	0.00%
7	23	90,749,657	7.99%	\$7,248,266	7.41%	\$6,726,229	21	\$89,828,856	\$6,726,229	7.49%	2	\$920,801	0	0	0.00%
8	45	151,265,046	5.69%	\$8,611,054	11.57%	\$17,495,580	43	\$148,263,460	\$17,389,359	11.73%	2	\$3,001,586	2	106,221	3.54%
9	13	105,159,309	9.02%	\$9,490,079	8.90%	\$9,361,584	13	\$105,159,309	\$9,361,584	8.90%	0	\$0	0	0	0.00%
10	11	118,580,545	9.39%	\$11,129,424	6.60%	\$7,825,941	11	\$118,580,545	\$7,825,941	6.60%	0	\$0	0	0	0.00%
<b>Totals</b>	<b>184</b>	<b>\$850,737,440</b>	<b>8.25%</b>	<b>\$70,226,340</b>	<b>10.40%</b>	<b>\$88,443,018</b>	<b>176</b>	<b>\$840,355,583</b>	<b>\$87,604,702</b>	<b>10.42%</b>	<b>8</b>	<b>\$10,381,857</b>	<b>6</b>	<b>\$838,316</b>	<b>8.07%</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.  
Note: Total dollars awarded may not equal the total due to rounding  
DBEs include certified and non-certified minority and women owned businesses

**5.11 Emerging Small Business Program (ESB)**

To assist in determining the effectiveness of CDOTs ESB Program, The Wilson Group also conducted utilization analyses of ESB contracts awarded. These analyses will include the number of contracts identified for the ESB Program, the number of contracts awarded, the range of contracts by dollar amount that ESB participants were successful performing and if ESB goals were assigned to contracts, were they met.

**5.11.1 ESB Prime Contractor Utilization Analysis - Construction**

The utilization analysis of ESB prime contractors for Construction projects is shown in **Table 5-12**. During the study period, ESB firms were awarded 26 construction prime contracts totaling over \$43.0 million or 2.63 percent of the total federally funded dollars expended by the CDOT. Of this amount, 7 contracts totaling over \$2.5 million were awarded to nonminority Women-owned ESB firms and 19 contracts totaling over \$40.4 million were awarded to nonminority owned ESB firms.

**Table 5-12  
 Construction  
 Calendar Years 2002-2007  
 Prime Contractor Utilization\_ESB  
 Percentage of Total Dollars  
 Ethnicity Classification  
 Colorado Department of Transportation**

Calendar Year	African Americans	Native American	Asian American	Hispanic Americans	Nonminority Women	Minority ESBs	Nonminority ESBs	Total Dollars Awarded
2002	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$1,738,069 0.58%	\$298,288,188
2003	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$595,724 0.21%	\$595,724 0.21%	\$704,085 0.25%	\$280,008,573
2004	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$513,003 0.17%	\$513,003 0.17%	\$3,618,258 1.21%	\$298,499,987
2005	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$894,597 0.38%	\$894,597 0.38%	\$8,502,188 3.60%	\$236,171,009
2006	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$548,030 0.15%	\$548,030 0.15%	\$8,491,211 2.36%	\$359,368,150
2007	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$17,432,085 10.66%	\$163,582,678
<b>Total</b>	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$2,551,354 0.16%	\$2,551,354 0.16%	\$40,485,896 2.47%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007  
 Note: Total dollars awarded may not equal the total due to rounding

**5.11.2 ESB Subcontractor Utilization Analysis - Construction**

**Table 5-13** presents the utilization analysis of ESB subcontractors for Construction projects. Minority owned ESB firms received over \$28.3 million or 1.73 percent of the total Construction dollars expended; nonminority owned ESB firms received over \$12.6 million or .77 percent of total contract dollars.

The successful minority owned ESB firms were nonminority Women, receiving over \$16.2 million or 0.99 percent; followed by Hispanic Americans, receiving over \$9.8 million or 0.60 percent; followed by Asian Americans, receiving over \$1.4 million or 0.09 percent; followed by Native Americans, receiving \$674,369 or 0.04 percent; followed by African Americans, receiving \$163,141 or 0.01 percent of the total construction dollars expended.

**Table 5-13  
 Construction  
 Calendar Years 2002-2007  
 Subcontractor Utilization\_ESB  
 Percentage of Total Dollars  
 Ethnicity Classification  
 Colorado Department of Transportation**

Calendar Year	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total Minority ESBs	Nonminority ESBs	Total Dollars Awarded
2002	\$0 0.00%	\$395,975 0.13%	\$51,138 0.02%	\$2,173,840 0.73%	\$2,031,144 0.68%	\$4,652,096 1.56%	\$543,815 0.18%	\$298,288,188
2003	\$9,250 0.00%	\$69,215 0.02%	\$196,002 0.07%	\$990,395 0.35%	\$4,851,658 1.73%	\$6,116,520 2.18%	\$734,039 0.26%	\$280,008,573
2004	\$32,645 0.01%	\$198,129 0.07%	\$59,450 0.02%	\$1,013,746 0.34%	\$3,663,819 1.23%	\$4,967,789 1.66%	\$3,987,066 1.34%	\$298,499,987
2005	\$59,072 0.03%	\$11,050 0.00%	\$462,563 0.20%	\$1,589,942 0.67%	\$2,249,913 0.95%	\$4,372,540 1.85%	\$1,102,260 0.47%	\$236,171,009
2006	\$62,174 0.02%	\$0 0.00%	\$396,753 0.11%	\$2,266,903 0.63%	\$2,472,175 0.69%	\$5,198,005 1.45%	\$5,909,237 1.64%	\$359,368,150
2007	\$0 0.00%	\$0 0.00%	\$261,732 0.16%	\$1,815,723 1.11%	\$963,364 0.59%	\$3,040,819 1.86%	\$379,650 0.23%	\$163,582,678
<b>Total</b>	\$163,141 0.01%	\$674,369 0.04%	\$1,427,638 0.09%	\$9,850,549 0.60%	\$16,232,074 0.99%	\$28,347,770 1.73%	\$12,656,068 0.77%	\$1,635,918,584

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007.  
 Note: Total dollars awarded may not equal the total due to rounding

## 5.12 Disparity Analysis

The objective of this Section is to determine if Minority/Women/Disadvantaged Business Enterprises (M/W/DBEs) were underutilized or overutilized on the federally funded contracts awarded by the Colorado Department of Transportation (CDOT) based upon their availability.

The Wilson Group conducted a disparity analysis for each business category to determine the differences between the utilization of M/W/DBEs and the availability of such firms within the relevant market area. The data presented in the Availability and Utilization Analyses was used as the basis to determine if M/W/DBEs received a fair and equitable share of the contracts awarded by the CDOT. This is determined through the disparity index calculation that results in a comparison of the availability of M/W/DBEs with the utilization of such firms.

The disparity index is obtained by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates a balance between utilization and availability. A disparity index of less than 100 indicates that firms are underutilized or overutilized if greater than 100. An index of less than 80 indicates significant underutilization and an index of 0.00 indicates zero utilization.

This section provides the results of the disparity analyses for Construction based on the utilization and availability of M/W/DBEs in the CDOT's relevant market area.

### 5.12.1 Construction - Subcontracts

The disparity analysis for all Construction subcontracts is shown in **Table 5-14**. During the study period, M/W/DBE firms owned by African Americans, Native Americans, Asian Americans, Hispanic Americans and Other M/W/DBEs were significantly underutilized. Nonminority Women owned firms were underutilized. Nonminority Women owned firms also received the largest total contract dollars, receiving over \$118.4 million or 7.24 percent; they were also the highest group in availability with 7.92 percent. Hispanic American owned firms were the second highest group in availability and total contract dollars, receiving over \$55.6 million or 3.40 percent and availability of 6.59 percent. The following is a summary of the analysis for the overall study period:

#### Black Americans

- Calendar years January 2002 through June 2007 – significantly underutilized as a subcontractor with a disparity index of 18.63. The availability analysis indicates that 2.13 percent of the firms available were owned by Black Americans.

**Table 5-14**  
**Subcontractor Disparity Analysis**  
**Construction**  
**Calendar Years 2002 - 2007**  
**Colorado Department of Transportation**

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars <sup>1</sup>	% of Firms Available <sup>2</sup>	Disparity Index <sup>3</sup>	Disparity Impact Under/Over Utilization
<b>2002</b>						
African Americans	14	\$911,574	0.31%	2.13%	14.35	* Underutilization
Native Americans	12	\$975,322	0.33%	0.73%	44.79	* Underutilization
Asian Americans	10	\$490,614	0.16%	0.49%	33.57	* Underutilization
Hispanic Americans	69	\$9,185,304	3.08%	6.59%	46.73	* Underutilization
Nonminority Women	194	\$18,929,728	6.35%	7.92%	80.13	Underutilization
<b>2003</b>						
African Americans	26	\$1,364,771	0.49%	2.13%	22.88	* Underutilization
Native Americans	7	\$252,240	0.09%	0.73%	12.34	* Underutilization
Asian Americans	11	\$380,928	0.14%	0.49%	27.76	* Underutilization
Hispanic Americans	84	\$7,274,812	2.60%	6.59%	39.42	* Underutilization
Nonminority Women	197	\$19,791,559	7.07%	7.92%	89.24	Underutilization
<b>2004</b>						
African Americans	27	\$1,718,953	0.58%	2.13%	27.04	* Underutilization
Native Americans	8	\$462,046	0.15%	0.73%	21.20	* Underutilization
Asian Americans	8	\$353,089	0.12%	0.49%	24.14	* Underutilization
Hispanic Americans	66	\$8,432,656	2.83%	6.59%	42.87	* Underutilization
Nonminority Women	213	\$22,758,982	7.62%	7.92%	96.27	Underutilization
Other M/W/DBEs	1	\$95,000	0.03%	4.43%	0.72	* Underutilization
<b>2005</b>						
African Americans	12	\$1,352,309	0.57%	2.13%	26.88	* Underutilization
Native Americans	4	\$94,721	0.04%	0.73%	5.49	* Underutilization
Asian Americans	19	\$1,173,623	0.50%	0.49%	101.42	Overutilization
Hispanic Americans	80	\$7,534,977	3.19%	6.59%	48.41	* Underutilization
Nonminority Women	238	\$18,730,623	7.93%	7.92%	100.14	Overutilization
<b>2006</b>						
African Americans	6	\$1,037,288	0.29%	2.13%	13.55	* Underutilization
Native Americans	4	\$329,689	0.09%	0.73%	12.57	* Underutilization
Asian Americans	10	\$582,682	0.16%	0.49%	33.09	* Underutilization
Hispanic Americans	80	\$17,442,819	4.85%	6.59%	73.65	* Underutilization
Nonminority Women	194	\$25,197,949	7.01%	7.92%	88.53	Underutilization
<b>2007</b>						
African Americans	1	\$105,917	0.06%	2.13%	3.04	* Underutilization
Native Americans	2	\$1,676,366	1.02%	0.73%	140.38	Overutilization
Asian Americans	10	\$441,766	0.27%	0.49%	55.11	* Underutilization
Hispanic Americans	49	\$5,750,189	3.52%	6.59%	53.34	* Underutilization
Nonminority Women	116	\$13,018,554	7.96%	7.92%	100.48	Overutilization
<b>OVERALL</b>						
African Americans	86	\$6,490,812	0.40%	2.13%	18.63	* Underutilization
Native Americans	37	\$3,790,385	0.23%	0.73%	31.74	* Underutilization
Asian Americans	68	\$3,422,701	0.21%	0.49%	42.70	* Underutilization
Hispanic Americans	428	\$55,620,757	3.40%	6.59%	51.59	* Underutilization
Nonminority Women	1,152	\$118,427,394	7.24%	7.92%	91.40	Underutilization
Other M/W/DBEs	1	\$95,000	0.01%	4.43%	0.13	* Underutilization

<sup>1</sup> The number of contracts awarded to subcontractors.

<sup>2</sup> The dollars awarded to subcontractors.

<sup>3</sup> The percentage of dollars from the prime contractor utilization.

<sup>4</sup> The percentage of available firms.

<sup>5</sup> The disparity index is % utilization divided by % availability multiplied by 100.

<sup>6</sup> The disparity index of less than 100 indicates underutilization or overutilization if greater than 100.

\* Significantly underutilized - disparity index below 80.00.



Native Americans

- Calendar years January 2002 through June 2007 – significantly underutilized as a subcontractor with a disparity index of 31.74. The availability analysis indicates that 0.73 percent of the firms available were owned by Native Americans.

Asian Americans

- Calendar years January 2002 through June 2007 – significantly underutilized as a subcontractor with a disparity index of 42.70. The availability analysis indicates that 0.49 percent of the firms available were owned by Asian Americans.

Hispanic Americans

- Calendar years January 2002 through June 2007 – significantly underutilized as a subcontractor with a disparity index of 51.59. The availability analysis indicates that 6.59 percent of the firms available were owned by Hispanic Americans.

Nonminority Women

- Calendar years January 2002 through June 2007 – underutilized as a subcontractor with a disparity index of 91.40. The availability analysis indicates that 7.92 percent of the firms available were owned by Women.

Other M/W/DBEs

- Calendar years January 2002 through June 2007 – significantly underutilized as a subcontractor with a disparity index of 0.13. The availability analysis indicates that 4.43 percent of the firms available were owned by Other M/W/DBEs.

**CHAPTER 6.0 – CONSUTLANT  
DATA COLLECTION, RELEVANT MARKET AREA,  
UTILIZATION AND DISPARITY ANALYSES**



## CHAPTER 6.0 – CONSULTANT DATA COLLECTION, RELEVANT MARKET AREA, UTILIZATION AND DISPARITY ANALYSES

This Chapter provides an overview of our analysis of the federally funded highway contracting activity occurring during the period of January 1, 2002 through December 31, 2007 for the Colorado Department of Transportation (CDOT). We will also define CDOTs relative market area for Consultant services and analyze the utilization of firms available.

### 6.1 Data Collection and Management

This section describes the data parameters and the process utilized to collect and manage the Consultant data used in this study.

#### Consultant Services

Consultant services were defined utilizing CDOTs Prequalification Work Codes using the following list:

#### Consultant Work Codes

WORK CODES	WORK CODES DESCRIPTION
1	Acoustical Engineering
2	Architecture
3	Bridge Design
4	Bridge Inspection
5	Buildings (Contract Management)
6	Buildings Management (Contract Administration)
7	Civil Engineering
8	Electrical Engineering
9	Engineering Expert Witness
10	Engineering Management
11	Engineering Management (Contract Administration)
12	Environmental Engineering
13	Geological Engineering
14	Geotechnical Engineering
15	Highway & Street Design
16	Hydraulics
17	Landscape Architecture
18	Materials Testing
19	Mechanical Engineering
20	Sanitary Engineering
21	Soils Engineering
22	Structural Engineering
23	Surveying
24	Transportation Engineering
25	Traffic Engineering
26	Tunneling
27	Value Engineering

### **Data Collection**

The Wilson Group developed a Data Acquisition Work Plan which was presented to and approved by CDOT's key staff members. Interviews were conducted with Business Managers in each of the six (6) regions, headquarters, Information Technology Office (ITO), Center for Equal Opportunity (CEO), Contracts and Agreements Office, Audit Office and the Central Files Section. Sample data was initially retrieved and the Wilson Group met with the resource most knowledgeable with the data type to ensure data integrity and acquisition focus. A combination of desktop digital databases, archival legacy systems and extensive paper files were used to identify and acquire the necessary study data. However, the majority of the data were retrieved through a manual data collection process. Several teams were assigned to CDOT Headquarters and each Regional Office to review and collect consultant and subconsultant Task Order awards and payment. The data collection effort targeted Architectural & Engineering consultants who had pre-qualified to enter into contracts with CDOT, prime consultants that had received task orders during the study period, subconsultants who had contracted with prime consultants, companies generally statewide that were available to compete for CDOT contracts, DBEs and minority and women owned businesses that could compete to provide consultant services.

Through the data collection efforts, data were collected to conduct the necessary analysis for a disparity study. However, CDOT retains limited information on its consultant contracts that limits the additional analyses conducted for construction contracts.

### **Prequalification Data**

Section 24-103-402 C.R.S. provides that companies that wish to contract as prime contractors or prime consultants on CDOT highway projects must be pre-qualified. The pre-qualification process is managed by CDOT's Contracts and Agreements Office. Successfully pre-qualified companies are authorized to seek CDOT contracts for twelve contiguous months and must reapply for prequalification each year.

A paper file is kept on each pre-qualification applicant and is controlled by CDOT's Contracts and Agreements Office. The current year and two previous years' application data files are maintained in this office. Older files are stored in CDOT's archival area in the CDOT Headquarters building.

Contracts and Agreements Office also maintains a Microsoft Access database of current year pre-qualified companies. However, as the same company is pre-qualified thereafter, the previous data is written over. Therefore, no archived records of active companies are kept in the database.

The Wilson Group reviewed all current and all archived paper files on each pre-qualification application archived from January 2002 through December 2007 for Consultant firms. From this information a master demographic table and a separate master prequalification table were constructed for A&E consultant related companies. The following information is contained in the Prequalification Table:

Although gender and ethnicity were requested on the prequalification application, many did not report it. The Wilson Group used prior pre-qualification archived digital tables to complement the paper files and fill in missing ethnic and gender data to the extent data was available. In addition, CDOTs DBE tables were utilized to populate the DBE fields in the pre-qualification tables as a supplement to the file data. The Wilson Group believes that the data obtained and provided is very comprehensive and inclusive of all prequalifications that occurred during the study period.

**Consultant Prequalification Table**

<b>A&amp;E Demographic Table</b>	<b>A&amp;E Prequalification Table</b>
Company Name	Company Name
Owners/contact Name	Consultant Type
Registered Name	FEIN #
FEIN#	Vendor #
Vendor #	Pre-qualified Date
Consultant Type	Pre-qualified Expiration Date
Street	Work Codes
City	NAICs Code
State	Number of Employees in Company
Zip	DBE Expiration Date
Phone #	ESB Expiration Date
Fax #	WBE Expiration Date
Email Address	
County of business Address	
Owner's Ethnicity	
Owner's Gender	

Demographic tables contain the most current company data and are comprised of all companies that pre-qualified for CDOT contracts during the study period.

**Consultant Data**

Prime consultant and subconsultant payout totals were provided by the following sources:

- CDOTs archived Construction Management System (CMS) data - CMS is a proprietary consultant management database and report system discontinued November 2006 when replaced by CDOT SAP/ERP system.
- Consultant Usage Plan (CUP) - a report of consultant agreements that is maintained by CDOTs Office of Contracts and Agreements. One professional in charge of the consultant prequalification process and the Consultant Usage Plan receives every agreement/transaction related to an

awarded consultant contract and enters this data into the Consultant Usage Plan. Agreements/transactions include task order payments, amendments or contract revisions. The Consultant Usage Plan is an ongoing record of the current status of payouts on any given consultant contract in any region and headquarters. If the consultant contract is closed then it represents the final payout status in total as well as individual task order payouts by contract and by region. The "FY X Final Encumbrance" value represents the final payout per contract if it closed out or the most current running total of payouts for the contract if it is still open. If the contract spans more than one year, the payout for the fiscal year is represented in the respective "FY X Final Encumbrance" field. The sum of the "FY X Final Encumbrance" values for a closed contract equals the total payout for this contract. This is the value selected to represent prime consultant payouts for each year of the study period used for analysis in the CDOT Disparity Study. The CUP reports did not contain subconsultant payout data.

- Regional and headquarters project files, and files stored in CDOT's Central Files section – the files included contracts, invoices, subcontractor payments and related data.

Separately, these sources provided incomplete data. For prime consultant data acquisition CUP tables provided base data, SAP and CMS supplemented CUP data. Since SAP/ERP was initiated in November 2006, it only provided sufficient consultant payout data from January through June 2007. However, in combination these sources provided a comprehensive database of prime consultant payout for the study period.

Subconsultant data was dependent on regional contract files. The Wilson Group staff and CDOT staff went on-site to all six (6) regions and headquarters to review and collect individual contract file information. Final contract files contained the CMS numbers and project sub-account numbers assigned to the project for accounting purposes. The Wilson Group and CDOT used this information as reference to document payouts to subconsultants by prime consultants for specific projects. After subconsultant payout tables were completed for each region, they were combined into one master table. Records were indexed and since CMS and SAP numbers were the common value to link prime consultant payout data with subconsultant payout data, each record was carefully evaluated against other records with identical sub-account numbers or project numbers to identify CMS numbers that could be inserted into records without this data. In February 2007, CDOT issued a revision to its data storage policy that changed the required time frame to store contract files from seven prior years plus current to three prior years plus current to archive. Some regions discarded contract files older than the three prior plus current, resulting in incomplete subconsultant payout data.

Support tables to further complement pre-qualification and award tables included consultant and sub-consultant work codes and descriptions. Also included is the prime contract current earnings table.

A contract database was compiled using the above mentioned sources. Based on the parameters of the study that were discussed with the client’s contract manager, certain contracts were excluded from further analysis. Reasons for exclusion include contracts that were:

- Out of the Study Period – the study period for consultants included activity occurring January 2002 through December 2007.
- State Funded – the study included only federally funded contracts.

**6.2 Market Area Analysis**

The methodology to determine the relevant market area is the same as described in Chapter 5, section 5.2.

**6.2.1 Consultant Services**

During the study period, CDOT expended over \$523.5 million on Consultant services with businesses in the relevant market area, utilizing 82 individual firms on 1863 task orders. Firms located in the State of Colorado received over 95 percent of the total Consultant dollars awarded during the study period. **Table 6-1** presents dollar amounts, percentage of task orders and percentage of firms utilized for CDOTs relevant market area; the State of Colorado. The utilization, availability and disparity analyses will use only the Consultant task orders included in the relevant market area.

**Table 6-1**  
**Consultant**  
**Relevant Market Area**  
**Colorado Department of Transportation**  
**Calendar Years 2002 – 2007**

	State of Colorado
<b>Total Dollars</b>	\$523,545,932
<b>Percent of Dollars</b>	95.87%
<b>Percent of Task Orders</b>	90.04%
<b>Percent of Firms Utilized</b>	82.00%

Source: Colorado Department of Transportation January 1, 2002 through December 31, 2007

### 6.3 Prime Contractor Utilization Analysis - Consultant

The following are the results of the prime utilization analysis for Consultants:

#### 6.3.1 Consultants

The utilization analysis of prime Consultants is shown in **Table 6-2**. During the study period, the CDOT awarded over \$523.5 million federally funded Consultant task orders. M/W/DBEs were awarded over \$87.5 million or 16.73 percent of the total federal prime Consultant dollars expended by the CDOT.

The M/W/DBE firms most utilized as prime consultants were owned by Asian Americans, receiving over \$70.3 million, or 13.43 percent; followed by nonminority Women owned firms, receiving over \$10.9 million or 2.09 percent of the total task order dollars awarded.

The analysis also shows that during the period of January through December 2007, DBE participation was the highest based on the percentage of total dollars awarded. During this time period, M/W/DBEs received over \$30.5 million or 41.55 percent of the total dollars awarded.

**Table 6-2  
Prime Consultant  
Utilization - Statewide  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Calendar Year	African Americans	Native American	Asian American	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
2002	\$0 0.00%	\$91,487 0.11%	\$10,695,340 12.77%	\$1,126,873 1.35%	\$718,849 0.86%	\$12,632,550 15.09%	\$71,105,872 84.91%	\$83,738,422
2003	\$0 0.00%	\$0 0.00%	\$6,951,850 6.21%	\$1,138,799 1.02%	\$1,264,203 1.13%	\$9,354,851 8.35%	\$102,671,194 91.65%	\$112,026,045
2004	\$74,989 0.09%	\$0 0.00%	\$9,350,603 10.89%	\$862,630 1.00%	\$742,850 0.87%	\$11,031,072 12.85%	\$74,832,010 87.15%	\$85,863,082
2005	\$0 0.00%	\$0 0.00%	\$7,520,635 8.50%	\$1,828,392 2.07%	\$2,751,927 3.11%	\$12,100,953 13.67%	\$76,426,071 86.33%	\$88,527,024
2006	\$0 0.00%	\$0 0.00%	\$6,089,723 7.62%	\$732,414 0.92%	\$5,095,072 6.38%	\$11,917,209 14.92%	\$67,956,820 85.08%	\$79,874,029
2007	\$0 0.00%	\$0 0.00%	\$29,692,005 40.39%	\$500,897 0.68%	\$355,416 0.48%	\$30,548,318 41.55%	\$42,969,012 58.45%	\$73,517,330
<b>Total</b>	\$74,989 0.01%	\$91,487 0.02%	\$70,300,156 13.43%	\$6,190,004 1.18%	\$10,928,317 2.09%	\$87,584,954 16.73%	\$435,960,978 83.27%	\$523,545,932

Source: Colorado Department of Transportation for the period of January 1, 2002 through June 30, 2007

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.



## 6.4 Subconsultant Utilization - Consultant

The Wilson Group conducted utilization analyses of all M/W/DBE and non-M/W/DBE subconsultants during the study period.

The following are the results of the subconsultant utilization analysis for Consultants:

### 6.4.1 Consultants

The utilization analysis of subconsultants for Consultant services is shown in **Table 6-3**. During the study period, prime consultants awarded over \$67.8 million subconsultant task orders. M/W/DBE subconsultants were awarded over \$23.4 million or 4.48 percent of the total federal dollars expended for consultant services.

The M/W/DBE firms most utilized as subconsultants were owned by non-minority Women, receiving over \$13.2 million, or 2.52 percent; followed by Asian American owned firms, receiving over \$7.6 million or 1.46 percent; followed by Hispanic American owned firms, receiving over \$2.0 million or 0.40 percent of the total consultant dollars awarded.

**Table 6-3  
Consultant  
Subconsultant Utilization  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

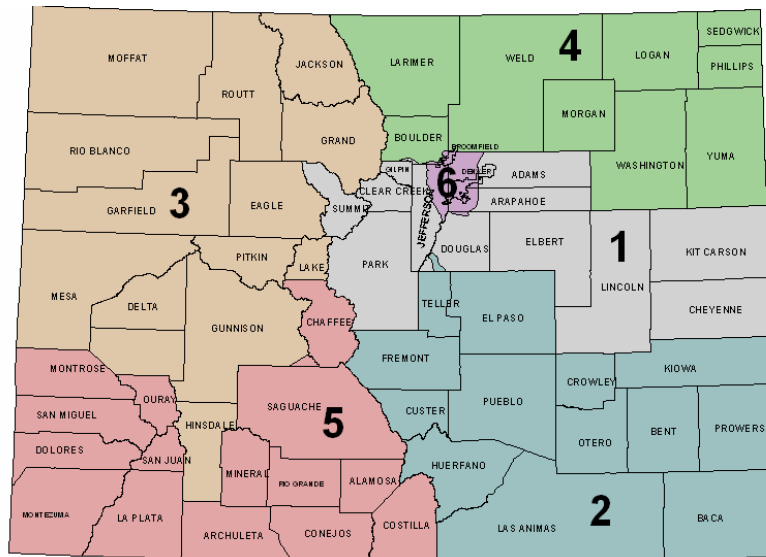
Calendar Year	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non-M/W/DBEs	Total Dollars Awarded
2002	\$0 0.00%	\$176,646 0.21%	\$805,755 0.96%	\$173,803 0.21%	\$1,122,034 1.34%	\$2,278,238 2.72%	\$7,576,520 9.05%	\$83,738,422
2003	\$0 0.00%	\$0 0.00%	\$1,067,236 0.95%	\$312,998 0.28%	\$4,836,658 4.32%	\$6,216,892 5.55%	\$12,768,818 11.40%	\$112,026,045
2004	\$3,612 0.00%	\$869 0.00%	\$1,643,282 1.91%	\$357,618 0.42%	\$3,268,899 3.81%	\$5,274,281 6.14%	\$7,728,202 9.00%	\$85,863,082
2005	\$0 0.00%	\$19,159 0.02%	\$1,628,678 1.84%	\$109,042 0.12%	\$1,471,979 1.66%	\$3,228,857 3.65%	\$7,428,144 8.39%	\$88,527,024
2006	\$80,756 0.10%	\$205,562 0.26%	\$1,507,191 1.89%	\$913,333 1.14%	\$1,436,894 1.80%	\$4,143,736 5.19%	\$6,348,462 7.95%	\$79,874,029
2007	\$31,680 0.04%	\$19,484 0.03%	\$983,521 1.34%	\$228,857 0.31%	\$1,071,979 1.46%	\$2,335,521 3.18%	\$2,523,720 3.43%	\$73,517,330
<b>Total</b>	\$116,048 0.02%	\$421,720 0.08%	\$7,635,664 1.46%	\$2,095,650 0.40%	\$13,208,443 2.52%	\$23,477,525 4.48%	\$44,373,865 8.48%	\$523,545,932

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## 6.5 Colorado Department of Transportation Regional Utilization Analyses



Source: Colorado Department of Transportation, Regional Map

**Exhibit 6-4** shows that of the total federal dollars awarded by the CDOT during the study period over \$105.8 million or 20.22 percent of the total prime consultant task order dollars were awarded in Region 1, of this amount M/W/DBEs received approximately \$26.6 million or 25.19 percent; over \$96.9 million or 18.51 percent were awarded in Region 2, of which M/W/DBEs received approximately \$16.7 million or 17.24 percent; over \$37.5 million or 7.17 percent were awarded in Region 3, of which M/W/DBEs received approximately \$1.1 million or 3.08 percent; over 77.9 million, or 14.89 percent were awarded in Region 4, of which M/W/DBEs received approximately \$32.7 million or 42.04 percent; over \$26.3 million or 5.04 percent were awarded in Region 5, of which M/W/DBEs received approximately \$3 million or 11.51 percent; over \$110 million or 21.01 percent were awarded in Region 6, of which M/W/DBEs received approximately \$3 million or 2.78 percent and over 68.8 million or 13.15 percent were awarded by Headquarters, of which M/W/DBEs received approximately \$4.1 million or 6.07 percent.

**Table 6-4  
Prime Consultant  
Utilization\_All Regions  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

REGIONS	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
REGION 1	\$0 0.00%	\$0 0.00%	\$25,044,781 23.66%	\$838,058 0.79%	\$783,390 0.74%	\$26,666,229 25.19%	\$79,208,445 74.81%	\$105,874,674
REGION 2	\$74,989 0.08%	\$0 0.00%	\$10,535,028 10.87%	\$452,387 0.47%	\$5,646,546 5.83%	\$16,708,950 17.24%	\$80,216,938 82.76%	\$96,925,887
REGION 3	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$1,013,472 2.70%	\$144,178 0.38%	\$1,157,650 3.08%	\$36,367,572 96.92%	\$37,525,222
REGION 4	\$0 0.00%	\$91,487 0.12%	\$31,224,543 40.04%	\$1,448,711 1.86%	\$19,382 0.02%	\$32,784,124 42.04%	\$45,190,024 57.96%	\$77,974,149
REGION 5	\$0 0.00%	\$0 0.00%	\$3,037,463 11.51%	\$0 0.00%	\$0 0.00%	\$3,037,463 11.51%	\$23,347,539 88.49%	\$26,385,003
REGION 6	\$0 0.00%	\$0 0.00%	\$458,340 0.42%	\$2,437,377 2.22%	\$158,815 0.14%	\$3,054,532 2.78%	\$106,956,610 97.22%	\$110,011,142
HEADQUARTERS	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$0 0.00%	\$4,176,006 6.07%	\$4,176,006 6.07%	\$64,673,849 93.93%	\$68,849,855
<b>Total</b>	\$74,989 0.01%	\$91,487 0.02%	\$70,300,156 13.43%	\$6,190,004 1.18%	\$10,928,317 2.09%	\$87,584,954 16.73%	\$435,960,978 83.27%	\$523,545,932

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

The overall results of the Regional analysis for prime consultants shows the Regions with the highest M/W/DBE prime consultant participation based on the percent of total dollars awarded were:

- Region 4 – 42.04%
- Region 1 – 25.19%
- Region 2 – 17.24%
- Region 5 – 11.51%
- Headquarters – 6.07%
- Region 3 – 3.08%
- Region 6 – 2.78%

**Exhibit 6-5** presents the utilization analysis of M/W/DBE subconsultant task orders awarded for each Region:

Of the total federal dollars awarded by the CDOT during the study period M/W/DBE subconsultant participation totaled:

- over \$1.2 million or 1.22 percent in Region 1;
- over \$3.3 million or 3.42 percent in Region 2;
- \$585,168 or 1.56 percent in Region 3;
- \$333,645 or 0.43 percent in Region 4;
- \$826,251 or 3.13 percent in Region 5;
- over \$5.8 million or 5.32 percent in Region 6; and
- over \$1 million or 1.46 percent of the task orders awarded to prime consultants by Headquarters.

The overall results of the Regional analysis for subconsultants shows the Regions with the highest M/W/DBE subconsultant participation based on the percent of total dollars awarded were:

- Region 6 – 5.32%
- Region 2 – 3.42%
- Region 5 – 3.13%
- Region 3 – 1.56%
- Headquarters – 1.46%
- Region 1 – 1.22%
- Region 4 – 0.43%

A detailed analysis of prime consultant and subconsultant M/W/DBE participation for each Region is presented in Appendix J.

**Table 6-5  
Consultant  
Subconsultant Utilization\_All Regions  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

<b>REGIONS</b>	<b>African Americans</b>	<b>Native Americans</b>	<b>Asian Americans</b>	<b>Hispanic Americans</b>	<b>Nonminority Women</b>	<b>Total M/W/DBEs</b>	<b>Total Dollars Awarded</b>
REGION 1	\$0 0.00%	\$8,419 0.01%	\$1,991,235 1.88%	\$223,225 0.21%	\$1,289,967 1.22%	\$3,512,845 3.32%	\$105,874,674
REGION 2	\$0 0.00%	\$61,451 0.06%	\$1,473,874 1.52%	\$1,323,038 1.36%	\$3,317,074 3.42%	\$6,175,437 6.37%	\$96,925,887
REGION 3	\$0 0.00%	\$0 0.00%	\$1,023,211 2.73%	\$101,857 0.27%	\$585,168 1.56%	\$1,710,236 4.56%	\$37,525,222
REGION 4	\$0 0.00%	\$0 0.00%	\$780,292 1.00%	\$212,231 0.27%	\$333,645 0.43%	\$1,326,168 1.70%	\$77,974,149
REGION 5	\$0 0.00%	\$0 0.00%	\$1,005,099 3.81%	\$36,105 0.14%	\$826,251 3.13%	\$1,867,455 7.08%	\$26,385,003
REGION 6	\$84,368 0.08%	\$351,850 0.32%	\$921,730 0.84%	\$141,338 0.13%	\$5,853,529 5.32%	\$7,352,815 6.68%	\$110,011,142
HEADQUARTERS	\$31,680 0.05%	\$0 0.00%	\$440,223 0.64%	\$57,857 0.08%	\$1,002,809 1.46%	\$1,532,569 2.23%	\$68,849,855
<b>Total</b>	\$116,048 0.02%	\$421,720 0.08%	\$7,635,664 1.46%	\$2,095,650 0.40%	\$13,208,443 2.52%	\$23,477,525 4.48%	\$523,545,932

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.

Note: Total dollars awarded may not equal the total due to rounding

M/W/DBEs include certified and non-certified minority and women owned businesses.

## **6.6 Prime Utilization Threshold Analyses - Consultant**

For further comparison of M/W/DBE utilization, the Wilson Group conducted a threshold analysis of Consultant prime task orders awarded by the CDOT. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Task Orders in the amount of \$50,000 or less
- Task Orders in the amount of \$50,001 to \$150,000
- Task Orders in the amount of \$150,001 to \$350,000
- Task Orders in the amount of \$350,001 to \$750,000
- Task Orders over \$750,001 to \$1,000,000
- Task Orders over \$1,000,001 to \$5,000,000
- Task Orders over \$5,000,000

### **6.6.1 Consultant**

**Table 6-6** shows the threshold analysis conducted of the 1863 prime Consultant task orders awarded by the CDOT. M/W/DBEs received 282 or 15.14 percent of the task orders and over \$57.6 million or 11.02 percent of the total prime Consultant task order dollars. The most successful groups were Asian American owned firms, receiving 158 or 8.48 percent; followed by non-minority Women and Hispanic American owned firms each receiving 61 or 3.27 percent of the task orders awarded. African American and Native American owned firms each received one (1) task order or .05 percent of the total task orders awarded. The following is a breakdown of M/W/DBE participation:

- M/W/DBEs received 17.51 percent of the dollars and 112 or 15.73 percent of the task orders in the dollar range of \$50,000 or less. The most successful groups were Asian American and non-minority Women owned firms, each receiving 42 or 5.90 percent of the task orders; Asian Americans received 6.84 percent of the dollars and nonminority Women received 5.96 percent of the dollars. Hispanic American owned firms received 28 or 3.93 percent of the task orders and 4.70 percent of the dollars. Native American and African American owned firms did not receive any of the task orders awarded in this dollar range.
- M/W/DBEs received 14.25 percent of the dollars and 78 or 14.21 percent of the task orders in the dollar range of \$50,001 to \$150,000. The most successful groups were Asian American owned firms, receiving 51 or 9.29 percent of the task orders and 9.75 percent of the dollars; followed by Hispanic American owned firms, receiving 19 or 3.46 percent of the task orders and 3.28 percent of the dollars; followed by nonminority Women owned firms, receiving 6 or 1.09 percent of the task orders and 0.89 percent of the dollars. African American and Native American owned firms each received one (1) or 0.18 percent of the task orders.

**Table 6-6  
Consultant  
Prime Consultant Threshold Utilization  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
\$50,000 or Less	\$0	\$0	\$1,221,357	\$839,076	\$1,064,121	\$3,124,555	\$14,724,046	\$17,848,601
# of Task Orders	0	0	42	28	42	112	600	712
Percent of Dollars	0.00%	0.00%	6.84%	4.70%	5.96%	17.51%	82.49%	
Percent of Task Orders	0.00%	0.00%	5.90%	3.93%	5.90%	15.73%	84.27%	
\$50,001 to \$150,000	\$74,989	\$91,487	\$4,827,490	\$1,625,282	\$438,697	\$7,057,946	\$42,459,304	\$49,517,249
# of Task Orders	1	1	51	19	6	78	471	549
Percent of Dollars	0.15%	0.18%	9.75%	3.28%	0.89%	14.25%	85.75%	
Percent of Task Orders	0.18%	0.18%	9.29%	3.46%	1.09%	14.21%	85.79%	
\$150,001 to \$350,000	\$0	\$0	\$8,603,965	\$2,276,935	\$931,049	\$11,811,950	\$57,687,262	\$69,499,212
# of Task Orders	0	0	38	12	3	53	258	311
Percent of Dollars	0.00%	0.00%	12.38%	3.28%	1.34%	17.00%	83.00%	
Percent of Task Orders	0.00%	0.00%	12.22%	3.86%	0.96%	17.04%	82.96%	
\$350,001 to \$750,000	\$0	\$0	\$5,559,859	\$660,563	\$4,179,661	\$10,400,083	\$67,771,125	\$78,171,208
# of Task Orders	0	0	12	1	7	20	131	151
Percent of Dollars	0.00%	0.00%	7.11%	0.85%	5.35%	13.30%	86.70%	
Percent of Task Orders	0.00%	0.00%	7.95%	0.66%	4.64%	13.25%	86.75%	
\$750,001 to \$1,000,000	\$0	\$0	\$3,481,117	\$788,148	\$894,943	\$5,164,209	\$29,304,352	\$34,468,561
# of Task Orders	0	0	4	1	1	6	33	39
Percent of Dollars	0.00%	0.00%	10.10%	2.29%	2.60%	14.98%	85.02%	
Percent of Task Orders	0.00%	0.00%	10.26%	2.56%	2.56%	15.38%	84.62%	
\$1,000,001 to \$5,000,000	\$0	\$0	\$21,317,876	\$0	\$3,419,846	\$24,737,722	\$157,104,190	\$181,841,912
# of Task Orders	0	0	10	0	2	12	80	92
Percent of Dollars	0.00%	0.00%	11.72%	0.00%	1.88%	13.60%	86.40%	
Percent of Task Orders	0.00%	0.00%	10.87%	0.00%	2.17%	13.04%	86.96%	
Above \$5,000,000	\$0	\$0	\$25,288,491	\$0	\$0	\$25,288,491	\$66,910,699	\$92,199,190
# of Task Orders	0	0	1	0	0	1	8	9
Percent of Dollars	0.00%	0.00%	27.43%	0.00%	0.00%	27.43%	72.57%	
Percent of Task Orders	0.00%	0.00%	11.11%	0.00%	0.00%	11.11%	88.89%	
<b>Total</b>	<b>\$74,989</b>	<b>\$91,487</b>	<b>\$45,501,163</b>	<b>\$5,401,856</b>	<b>\$6,613,528</b>	<b>\$57,683,024</b>	<b>\$249,552,436</b>	<b>\$523,545,932</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.  
Note: Total dollars awarded may not equal the total due to rounding

- M/W/DBEs received 17.00 percent of the dollars and 53 or 17.04 percent of the task orders in the dollar range of \$150,001 to \$350,000. The most successful groups were Asian American owned firms, receiving 38 or 12.22 percent of the task orders and 12.38 percent of the dollars; followed by Hispanic American owned firms, receiving 12 or 3.86 percent of the task orders and 3.28 percent of the dollars; followed by non-minority Women owned firms, 3 or 0.96 percent of the task orders and 1.34 percent of the dollars. African American and Native American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 13.30 percent of the dollars and 20 or 13.25 percent of the task orders in the dollar range of \$350,001 to \$750,000. The most successful groups were Asian American owned firms, receiving 12 or 7.95 percent of the task orders and 7.11 percent of the dollars; followed by nonminority Women, receiving 7 or 4.64 percent of the task orders and 5.35 percent of the dollars. Hispanic American owned firms received 0.85 percent of the dollars and one (1) or 0.66 percent of the task orders; African American and Native American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 14.98 percent of the dollars and 6 or 15.38 percent of the task orders in the dollar range of \$750,001 to \$1 million. The most successful groups were Asian American owned firms, receiving 4 or 10.26 percent of the task orders and 10.10 percent of the dollars; followed by nonminority Women and Hispanic American owned firms, each receiving one (1) or 2.56 percent of the task orders. African American and Native American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 12 or 13.04 percent of the task orders in the dollar range of \$1,000,001 to \$5 million. The most successful groups were Asian American owned firms, receiving 10 or 10.87 percent of the task orders and 11.72 percent of the dollars; followed by nonminority Women owned firms, receiving 2 or 2.17 percent of the task orders and 1.88 percent of the dollars. African American, Native American and Hispanic American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 27.43 percent of the dollars and one (1) or 11.11 percent of the task orders in the dollar range of above \$5 million. An Asian American owned firm received the only task order awarded in this dollar range.



## **6.7 Subconsultant Utilization Threshold Analyses - Consultants**

For further comparison of M/W/DBE utilization, the Wilson Group conducted a threshold analysis of Consultant subcontracts awarded by the CDOT. This was accomplished by evaluating the task orders awarded based on the following dollar ranges:

- Task Orders in the amount of \$150,000 or less
- Task Orders in the amount of \$150,001 to \$350,000
- Task Orders in the amount of \$350,001 to \$750,000
- Task Orders in the amount of \$750,001 to \$1,000,000
- Task Orders in the amount of \$1,000,001 to \$5,000,000
- Task Orders above \$5,000,000

### **6.7.1 Consultant**

**Table 6-7** shows the threshold analysis conducted of the 2,072 subconsultant task orders awarded during the study period. M/W/DBEs received 34.60 percent of the dollars and 934 or 45.08 percent of the subconsultant task orders awarded. The most successful groups were non-minority Women owned firms, receiving 19.47 percent of the dollars and 496 or 23.94 percent of the task orders; followed by Asian American owned firms, receiving 11.25 percent of the dollars and 306 or 14.77 percent of the task orders.

The following is a breakdown of M/W/DBE participation:

- M/W/DBEs received 36.59 percent of the dollars and 98 or 37.98 percent of the task orders in the dollar range of \$50,000 or less. The most successful groups were non-minority Women owned firms, receiving 61 or 23.64 percent of the task orders and 17.13 percent of the dollars; followed by Hispanic American owned firms, receiving 19 or 7.36 percent of the task orders and 5.47 percent of the dollars; followed by Asian American owned firms, receiving 18 or 6.98 percent of the task orders and 14 percent of the dollars in this dollar range. African American and Native American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 38.53 percent of the dollars and 169 or 44.95 percent of the task orders in the dollar range of \$50,001 to \$150,000. The most successful groups were non-minority Women owned firms, receiving 96 or 25.53 percent of the task orders and 18.88 percent of the dollars; followed by Asian American owned firms, receiving 49 or 13.03 percent of the task orders and 14.05 percent of the dollars; followed by Hispanic American owned firms, receiving 22 or 5.85 percent of the task orders and 5.26 percent of the dollars; followed by Native American owned firms, receiving 2 or 0.53 percent of the task orders and 0.34 percent of the dollars. African American owned firms did not receive any of the task orders in this dollar range.

**Table 6-7  
Consultant  
Subconsultant Threshold Utilization  
Percentage of Dollars  
Ethnicity Classifications  
Colorado Department of Transportation  
Calendar Years 2002 – 2007**

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total M/W/DBEs	Non-M/W/DBEs	Total Dollars Awarded
\$50,000 or Less	\$0	\$0	\$223,914	\$87,437	\$274,112	\$585,463	\$1,014,444	\$1,599,907
# of Task Orders	0	0	18	19	61	98	160	258
Percent of Dollars	0.00%	0.00%	14.00%	5.47%	17.13%	36.59%	63.41%	
Percent of Task Orders	0.00%	0.00%	6.98%	7.36%	23.64%	37.98%	62.02%	
\$50,001 to \$150,000	\$0	\$19,849	\$823,999	\$308,231	\$1,107,020	\$2,259,100	\$3,604,841	\$5,863,941
# of Task Orders	0	2	49	22	96	169	207	376
Percent of Dollars	0.00%	0.34%	14.05%	5.26%	18.88%	38.53%	61.47%	
Percent of Task Orders	0.00%	0.53%	13.03%	5.85%	25.53%	44.95%	55.05%	
\$150,001 to \$350,000	\$31,680	\$8,419	\$2,054,751	\$170,288	\$964,054	\$3,229,192	\$4,855,788	\$8,084,981
# of Task Orders	1	9	70	9	71	160	232	392
Percent of Dollars	0.39%	0.10%	25.41%	2.11%	11.92%	39.94%	60.06%	
Percent of Task Orders	0.26%	2.30%	17.86%	2.30%	18.11%	40.82%	59.18%	
\$350,001 to \$750,000	\$0	\$19,159	\$1,475,360	\$267,978	\$1,156,977	\$2,919,474	\$5,657,854	\$8,577,328
# of Task Orders	0	1	77	18	95	191	171	362
Percent of Dollars	0.00%	0.22%	17.20%	3.12%	13.49%	34.04%	65.96%	
Percent of Task Orders	0.00%	0.28%	21.27%	4.97%	26.24%	52.76%	47.24%	
\$750,001 to \$1,000,000	\$0	\$0	\$327,885	\$344,877	\$842,546	\$1,515,308	\$1,669,066	\$3,184,374
# of Task Orders	0	0	18	5	36	59	67	126
Percent of Dollars	0.00%	0.00%	10.30%	10.83%	26.46%	47.59%	52.41%	
Percent of Task Orders	0.00%	0.00%	14.29%	3.97%	28.57%	46.83%	53.17%	
\$1,000,001 to \$5,000,000	\$84,368	\$374,294	\$2,401,920	\$916,839	\$7,842,526	\$11,619,947	\$23,638,850	\$35,258,797
# of Task Orders	3	6	71	37	130	247	280	527
Percent of Dollars	0.24%	1.06%	6.81%	2.60%	22.24%	32.96%	67.04%	
Percent of Task Orders	0.57%	1.14%	13.47%	7.02%	24.67%	46.87%	53.13%	
Above \$5,000,000	\$0	\$0	\$327,834	\$0	\$1,021,207	\$1,349,041	\$3,933,022	\$5,282,063
# of Task Orders	0	0	3	0	7	10	21	31
Percent of Dollars	0.00%	0.00%	6.21%	0.00%	19.33%	25.54%	74.46%	
Percent of Task Orders	0.00%	0.00%	9.68%	0.00%	22.58%	32.26%	67.74%	
<b>Total</b>	<b>\$116,048</b>	<b>\$421,720</b>	<b>\$7,635,664</b>	<b>\$2,095,650</b>	<b>\$13,208,443</b>	<b>\$23,477,525</b>	<b>\$44,373,865</b>	<b>\$67,851,389</b>

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.  
Note: Total dollars awarded may not equal the total due to rounding

- M/W/DBEs received 39.94 percent of the dollars and 160 or 40.82 percent of the task orders in the dollar range of \$150,001 to \$350,000. The most successful groups were non-minority Women owned firms, receiving 71 or 18.11 percent of the task orders and 11.92 percent of the dollars; followed closely by Asian American owned firms, receiving, 70 or 17.86 percent of the task orders and 25.41 percent of the dollars; followed by Hispanic American and Native American owned firms, each receiving 9 or 2.30 percent of the task orders. An African American owned firm received one (1) task order in this dollar range.
- M/W/DBEs received 34.04 percent of the dollars and 191 or 52.76 percent of the task orders in the dollar range of \$350,001 to \$750,000. The most successful groups were nonminority Women, receiving 95 or 26.24 percent of the task orders and 13.49 percent of the dollars; followed by Asian American owned firms, receiving 77 or 21.27 percent of the task orders and 17.20 percent of the dollars; followed by Hispanic American owned firms, receiving 18 or 4.97 percent of the task orders and 3.12 percent of the dollars. A Native American owned firm received one (1) task order or 0.28 percent and African American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 47.59 percent of the dollars and 59 or 46.83 percent of the task orders in the dollar range of \$750,001 to \$1 million. The most successful groups were nonminority Women, receiving 36 or 38.57 percent of the task orders and 26.46 percent of the dollars; followed by Asian Americans, receiving 18 or 14.29 percent of the task orders and 10.30 percent of the dollars; followed by Hispanic Americans, receiving 5 or 3.97 percent of the task orders and 10.83 percent of the dollars. African Americans and Native American owned firms did not receive any of the task orders in this dollar range.
- M/W/DBEs received 32.96 percent of the dollars and 247 or 46.87 percent of the task orders in the dollar range of \$1,000,001 to \$5 million. The most successful groups were nonminority Women, receiving 130 or 24.67 percent of the task orders and 22.24 percent of the dollars; followed by Asian Americans, receiving 71 or 13.47 percent of the task orders and 6.81 percent of the dollars; followed by Hispanic Americans, receiving 37 or 7.02 percent of the task orders and 2.60 percent of the dollars.
- M/W/DBEs received 25.54 percent of the dollars and 10 or 32.26 percent of the task orders in the dollar range of over \$5 million. The most successful groups were nonminority Women, receiving 7 or 22.58 percent of the task orders and 19.33 percent of the dollars; followed by Asian Americans, receiving 3 or 9.68 percent of the task orders and 6.21 percent of the dollars. African Americans, Native Americans and Hispanic Americans did not receive any of the task orders in this dollar range.

## 6.8 Disparity Analysis

The objective of this Section is to determine if Minority/Women/Disadvantaged Business Enterprises (M/W/DBEs) were underutilized or overutilized on the federally funded contracts awarded by the Colorado Department of Transportation (CDOT) based upon their availability.

The Wilson Group conducted a disparity analysis for each business category to determine the differences between the utilization of M/W/DBEs and the availability of such firms within the relevant market area. The data presented in the Availability and Utilization Analyses was used as the basis to determine if M/W/DBEs received a fair and equitable share of the contracts awarded by the CDOT. This is determined through the disparity index calculation that results in a comparison of the availability of M/W/DBEs with the utilization of such firms.

The disparity index is obtained by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates a balance between utilization and availability. A disparity index of less than 100 indicates that firms are underutilized or overutilized if greater than 100. An index of less than 80 indicates significant underutilization and an index of 0.00 indicates zero utilization.

This section provides the results of the disparity analyses for Consultants based on the utilization and availability of M/W/DBEs in the CDOT's relevant market area.

### 6.8.1 Consultant

The disparity analysis for all Consultant task orders is shown in **Table 6-8**. During the study period, all M/W/DBE owned firms were significantly underutilized. Women owned firms received the largest total task order dollars, receiving over \$13.2 million or 2.52 percent; they were also the highest group in availability. Asian American owned firms were the second highest group in total task order dollars, receiving over \$7.6 million or 1.46 percent of the total federally funded Consultant dollars spent by the CDOT. The following is a summary of the analysis for the overall study period:

#### African Americans

- Calendar years 2002 through 2007 – significantly underutilized as a subconsultant with a disparity index of 0.88. The availability analysis indicates that 2.52 percent of the firms available were owned by African Americans.

#### Native Americans

- Calendar years 2002 through 2007 – significantly underutilized as a subconsultant with a disparity index of 4.40. The availability analysis indicates that 1.83 percent of the firms available were owned by Native Americans.

**Table 6-8**  
**Subconsultant Disparity Analysis**  
**Consultant**  
**Calendar Years 2002 - 2007**  
**Colorado Department of Transportation**

Ethnicity Classifications	# of Task Orders	Contract Dollars	% of Dollars <sup>1</sup>	% of Firms Available <sup>2</sup>	Disparity Index <sup>3</sup>	Disparity Impact Under/Over Utilization
<b>2002</b>						
African Americans	0	\$0	0.00%	2.52%	0.00	* Underutilization
Native Americans	11	\$176,646	0.21%	1.83%	11.53	* Underutilization
Asian Americans	19	\$805,755	0.96%	4.35%	22.12	* Underutilization
Hispanic Americans	35	\$173,803	0.21%	6.64%	3.13	* Underutilization
Nonminority Women	35	\$1,122,034	1.34%	23.23%	5.77	* Underutilization
<b>2003</b>						
African Americans	0	\$0	0.00%	2.52%	0.00	* Underutilization
Native Americans	0	\$0	0.00%	1.83%	0.00	* Underutilization
Asian Americans	30	\$1,067,236	0.95%	4.35%	21.90	* Underutilization
Hispanic Americans	16	\$312,998	0.28%	6.64%	4.21	* Underutilization
Nonminority Women	60	\$4,836,658	4.32%	23.23%	18.59	* Underutilization
<b>2004</b>						
African Americans	1	\$3,612	0.00%	2.52%	0.17	* Underutilization
Native Americans	2	\$869	0.00%	1.83%	0.06	* Underutilization
Asian Americans	72	\$1,643,282	1.91%	4.35%	44.00	* Underutilization
Hispanic Americans	25	\$357,618	0.42%	6.64%	6.27	* Underutilization
Nonminority Women	95	\$3,268,899	3.81%	23.23%	16.39	* Underutilization
<b>2005</b>						
African Americans	0	\$0	0.00%	2.52%	0.00	* Underutilization
Native Americans	1	\$19,159	0.02%	1.83%	1.18	* Underutilization
Asian Americans	80	\$1,628,678	1.84%	4.35%	42.29	* Underutilization
Hispanic Americans	16	\$109,042	0.12%	6.64%	1.86	* Underutilization
Nonminority Women	113	\$1,471,979	1.66%	23.23%	7.16	* Underutilization
<b>2006</b>						
African Americans	2	\$80,756	0.10%	2.52%	4.01	* Underutilization
Native Americans	3	\$205,562	0.26%	1.83%	14.06	* Underutilization
Asian Americans	66	\$1,507,191	1.89%	4.35%	43.38	* Underutilization
Hispanic Americans	13	\$913,333	1.14%	6.64%	17.22	* Underutilization
Nonminority Women	125	\$1,436,894	1.80%	23.23%	7.74	* Underutilization
<b>2007</b>						
African Americans	1	\$31,680	0.04%	2.52%	1.71	* Underutilization
Native Americans	1	\$19,484	0.03%	1.83%	1.45	* Underutilization
Asian Americans	39	\$983,521	1.34%	4.35%	30.75	* Underutilization
Hispanic Americans	5	\$228,857	0.31%	6.64%	4.69	* Underutilization
Nonminority Women	68	\$1,071,979	1.46%	23.23%	6.28	* Underutilization
<b>OVERALL</b>						
African Americans	4	\$116,048	0.02%	2.52%	0.88	* Underutilization
Native Americans	18	\$421,720	0.08%	1.83%	4.40	* Underutilization
Asian Americans	306	\$7,635,664	1.46%	4.35%	33.53	* Underutilization
Hispanic Americans	110	\$2,095,650	0.40%	6.64%	6.03	* Underutilization
Nonminority Women	496	\$13,208,443	2.52%	23.23%	10.86	* Underutilization

Source: Colorado Department of Transportation for the period of January 1, 2002 through December 31, 2007.

<sup>1</sup> The number of contracts awarded to subconsultants.

<sup>2</sup> The dollars awarded to subconsultants.

<sup>3</sup> The percentage of dollars from the prime consultant utilization.

<sup>4</sup> The percentage of available firms.

<sup>5</sup> The disparity index is % utilization divided by % availability multiplied by 100.

<sup>6</sup> The disparity index of less than 100 indicates underutilization or overutilization if greater than 100.

\* Significantly underutilized - disparity index below 80.00.

Asian Americans

- Calendar years 2002 through 2007 – significantly underutilized as a subconsultant with a disparity index of 33.53. The availability analysis indicates that 4.35 percent of the firms available were owned by Asian Americans.

Hispanic Americans

- Calendar years 2002 through 2007 – significantly underutilized as a subconsultant with a disparity index of 6.03. The availability analysis indicates that 6.64 percent of the firms available were owned by Hispanic Americans.

Nonminority Women

- Calendar years 2002 through 2007 – significantly underutilized as a subconsultant with a disparity index of 10.86. The availability analysis indicates that 23.23 percent of the firms available were owned by nonminority Women.

## CHAPTER 7.0 – ANECDOTAL ANALYSIS



## CHAPTER 7.0 – ANECDOTAL ANALYSIS

### 7.1 Introduction

This chapter describes the results of anecdotal information collected from personal interviews, public hearings, roundtables, written testimony and an online survey. The collection of personal accounts of incidents of discrimination and the analysis of this anecdotal information are important components of this Colorado Department of Transportation Disparity Study (Study). The information and analytical data provide a better understanding of the contracting culture within the Colorado Department of Transportation (CDOT).

Courts have relied on anecdotal data in disparity studies as evidence of the existence of past and present discrimination. Regarding the use of anecdotal evidence, the Supreme Court in 1989 explained, “Evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a . . . government’s determination that broader remedial relief is justified.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509, 109 S.Ct. 706, 730 (1989). The following courts have indicated that while anecdotal evidence alone is generally not sufficient to prove discrimination, combining accounts of specific incidents of discrimination to supplement strong evidence of statistical disparities can provide a strong evidentiary basis to support a race- and gender-conscious program.

Applying the *Croson* decision, the Ninth Circuit Court of Appeals in *Western States Paving Co., Inc. v. Washington State Department of Transportation* noted that “both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination.” 407 F.3d 983, 992 (9<sup>th</sup> Cir. 2005) (citing *Adarand Constructors, Inc. v. Slater (“Adarand VII”)*, 228 F.3d 1147, 1166 (10<sup>th</sup> Cir. 2000)). The Ninth Circuit criticized the Washington State Department of Transportation (WSDOT) for not introducing any anecdotal evidence of discrimination. During oral argument before the Ninth Circuit, WSDOT contended that the affidavits signed by applicants applying for DBE status provided evidence of discrimination within Washington. Addressing this evidence, the Court stated that the affidavits “do not provide any evidence of discrimination within Washington’s transportation contracting industry...these affidavits do not require prospective DBEs to certify that they have been victims of discrimination in the contracting industry.” *Id.* at 1002. The Court noted that the affidavits signed by the applicants for DBE status only required the business owners to certify that they had been subject to racial or ethnic prejudice or cultural bias or that they had suffered the effects of discrimination because they were a member of a minority group. Relying upon *Croson*, the Ninth Circuit stated, “Such claims of general societal discrimination—and even



generalized assertions about discrimination in an entire industry—cannot be used to justify race-conscious remedial measures. *Id.* (citing *Croson*, 488 U.S. at 498).

The Tenth Circuit has already held that evidence of discrimination in the transportation industry in Colorado has been documented. In *Concrete Works of Colorado v. Denver*, 321 F.3d 950, 969 (10<sup>th</sup> Cir.), *cert. denied*, 540 U.S. 1027 (2003), the Tenth Circuit Court of Appeals relied on anecdotal evidence such as evidence of application of different rules for minority and women-owned construction firms by large prime contractors. For example, large prime contractors applied prequalification requirements only for minority-owned firms (which were many times denied even though the prequalification requirements were met). The Court also relied upon evidence such as observation of graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, evidence was provided that based on personal experiences, many majority-owned firms refused to hire minority or women-owned subcontractors because they believed those firms were not competent.

Other minority and women-owned businesses testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations. See *id.* at 1072-73. There was extensive testimony detailing the difficulties minority and women-owned firms experienced in obtaining lines of credit. One woman-owned business testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations.

The most poignant anecdotal testimony in the *Concrete Works* case involved recitations of racially and gender-motivated harassment experienced by minority and women-owned businesses at work sites. Women were called “bitches” and Blacks were called “nigger” or “dumb nigger.” One seventy-three year old truck driver was called a “dumb, f-ing Mexican.” Even more disturbing was the testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of eighty feet.

In keeping with the legal precedent discussed above, the evidence of discrimination presented in this Chapter is compiled from 83 personal interviews with business owners from within the state of Colorado, as well as California and New Mexico (who worked on CDOT

contracts), all of whom attested by affidavit to the experiences they described in the interviews. The evidence also includes testimony from business owners at three separate public hearings and four roundtables. Additionally, evidence was collected in written format, either in formal letters or via email. Finally, the evidence includes the results of an online survey with information from 735 business owners.

## **7.2 Methodology**

Several methods were used to collect anecdotal data from individuals representing both minority-owned, woman-owned and disadvantaged business enterprises (M/W/DBE) and non-M/W/DBE businesses. Specifically, personal interviews of business owners, public hearings, roundtables, an online survey and written testimony were used to document specific incidents and patterns of discrimination. A detailed explanation of the process used to obtain evidence is discussed under each method.

To participate in the information gathering process, business owners had to have conducted business with or attempted to conduct business with CDOT or they had to have acted as a subcontractor on a project administered by CDOT during the relevant Study period. In some instances, written testimony was accepted and interviews were conducted with businesses that did not have prior work experience with CDOT. This was accommodated when an individual or organization specifically requested the opportunity to provide testimony. These individuals fit into one of the following categories:

- Desired to work with CDOT but did not know how
- Explored working with CDOT but were not able to identify opportunities for their business
- Provided a quote or bid as a subcontractor but was not on the winning team
- Felt that it was too difficult to work with CDOT or CDOT prime contractors
- Represented a trade or non-profit organization that was interested in the disparity study process

During the personal interviews, the interviewer asked each business owner to comment upon business that they conducted or attempted to conduct with CDOT or CDOT prime contractors during the relevant Study period. Business owners who participated in the public hearings and roundtables were asked to restrict their comments to examples concerning projects administered by CDOT.

The evidence collection process was primarily focused on contractors and consultants that provided roadway/highway construction, professional design or engineering services

covered under CDOT Section 1, Section 2 and Section 4 work codes. Again, testimony was accepted in some cases from business owners in other lines of business when they specifically requested the opportunity to provide input.

### **7.2.1 Public Hearings**

Three public hearings were conducted to receive testimony and exhibits relevant to CDOT's DBE programs and to DBE participation in highway construction, design and engineering contracting. The first hearing was held in Denver on June 23, 2008 at the PPA Events Center (Denver Police Protective Association). Fifty (50) individuals attended and twenty (20) testified. The second hearing was held on July 22, 2008 at the Greeley Recreation Center. Twenty (20) individuals attended and nine (9) provided oral testimonies. The final public hearing was held on August 21, 2008 at Pueblo City Hall. This hearing had six (6) attendees with three (3) providing testimony.

The public hearings were advertised by email, telephone, newspaper advertisements and announcements at local business meetings. CDOT published a public notice in June 2008 listing the dates and locations of all three upcoming hearings. This information was also advertised and remained on the CDOT Disadvantaged Business Enterprise webpage ([www.dot.state.co.us/EEO/DBEProgramPage.htm](http://www.dot.state.co.us/EEO/DBEProgramPage.htm)) and on the webpage of Folsom Point LLC ([www.folsompoint.com](http://www.folsompoint.com)) until the end of the year. Approximately one week in advance of each individual hearing, advertisements were published in a variety of regional publications, and translated into Spanish for Hispanic media outlets. These advertisements appeared in print and, in some cases, the community/events web pages of the following media:

- The Denver Post
- The Rocky Mountain News
- La Voz
- Caminos
- The Pueblo Chieftain
- The Greeley Tribune
- The Daily Journal
- The Urban Spectrum
- El Semanario

An email invitation was sent two weeks prior to each of the hearings to regional small business lists collected from various sources including CDOT, Regional Transportation District (RTD), the U.S. Small Business Administration, Central Contractor Registry, Chambers of Commerce, highway construction/engineering/design industry organizations, and other local business and community organizations including:

- Institute of Transportation Engineers
- Denver Hispanic Chamber of Commerce
- Colorado Women's Chamber of Commerce
- Women's Transportation Seminar
- COMTO
- Hispanic Contractors of Colorado
- RMMSDC
- RM Indian Chamber of Commerce
- Colorado Black Chamber of Commerce

- CCMA Colorado
- American Subcontractors Association
- RMMSDC
- TiE Rockies
- Asian Chamber of Commerce
- Denver Hispanic Chamber of Commerce
- ACEC
- RMMCA
- African American Construction Council
- Korean Chamber of Commerce
- Rocky Mountain Chinese Chamber of Commerce
- Latina Chamber of Commerce
- Colorado Contractor's Association

Publicity for all of the hearings was focused on reaching small business owners in each of the three major metropolitan areas along the Front Range (Denver, Colorado Springs/Pueblo and Fort Collins/Greeley). Outreach efforts for the first two hearings in Denver and Greeley were successful with high attendance. A similar outreach process was used for the Pueblo hearing, however public notice was not posted in the Daily Journal until August 20, the day before the hearing. This may have had some impact as to why attendance was lower at the final hearing.

A total of 32 business owners presented testimony at three public hearings. A total of 20 business owners presented testimony in Denver, nine in Greeley and three in Pueblo. Individuals in attendance at the public hearings were asked to sign in and were given an overview handout of the Disparity Study, speaker instructions, and a speaker's card to complete. The speaker instruction sheet provided additional information regarding the parameters of the testimony to be provided. If an individual was interested in speaking at the hearing and met the criteria to present testimony, then the individual completed the speaker's card before presenting testimony. The cards were collected and given to the Hearing Officer for roll call.

The Hearing Officer for the Denver and Pueblo hearings was Charlotte Robinson. The Hearing Officer in Greeley was Deirdre Kyle. Representatives from CDOT were asked to provide opening statements at each of the hearings. Commissioners Greg McKnight and Heather Barry provided opening comments at the Denver hearing. CDOT District 4 Director Robert Garcia provided an opening statement at the Greeley hearing. A CDOT representative was not available for the Pueblo hearing. All CDOT representatives left the public hearings after opening remarks to facilitate an open and candid speaking forum for contractors and consultants.

After opening comments from the CDOT representative (if available), the Hearing Officer provided an overview statement addressing the legal background for the Disparity Study, the components of the Study and the role of the hearing participants in establishing a factual record for the anecdotal portion of the Study. Participants were then instructed to provide specific testimony regarding any incidents of discrimination they experienced in conducting business

with CDOT or a CDOT prime contractor. As part of the hearing testimony, each speaker was required to provide complete identification, including the speaker's name, represented firm and the firm's certification status. After each speaker's testimony, the Hearing Officer asked questions to clarify the testimony. A court reporter recorded the proceedings at each of the hearings.

### **7.2.2 Roundtables**

Four (4) roundtables were conducted to receive testimony and exhibits relevant to CDOT's DBE programs and to DBE participation in highway construction, design and engineering contracting. The roundtables were targeted to specific niche groups and were by invitation only. The focus groups were to capture testimony of M/W/DBE firms, other small business owners and prime contractors. Given the smaller number of M/W/DBE firms in outlying areas and feedback from CDOT Regional Civil Rights Managers, the project team determined that better information could be obtained from the outlying areas through personal interviews. Therefore, additional interviews were scheduled with interested firms in Regions 2, 3 and 4.

The first roundtable was held on September 5, 2008 with members of the Colorado Contractors Association (CCA). A total of six prime contractors and one DBE firm attended the session, as well as the CCA Director. The session was primarily focused on CDOT prime contractor issues including the good-faith effort, DBE utilization and bidding processes.

A second roundtable was held on October 14, 2008 in Durango with firms that primarily worked in CDOT Region 5. A list of invitees was developed from online survey respondents, the CDOT DBE directory and the CDOT Region 5 Civil Rights Manager. Thirteen (13) companies were confirmed to attend and five business owners attended representing four companies. The group consisted of two DBE-certified (Black and woman-owned) subcontractors, one prime/subconsultant and two representatives from a minority-owned (non-DBE) subcontractor from New Mexico. The session was primarily focused on the DBE program, CDOT and prime contractor payment processes and discrimination.

A third roundtable with Hispanic-owned firms was held on October 16, 2008 at the Hispanic Contractors of Colorado (HCC) in Denver. A list of invitees was developed from online survey respondents, the CDOT DBE directory and members of HCC. In this case, ten (10) firms were confirmed to attend. Five (5) individuals participated representing three companies, in addition to the HCC Director. The group consisted of one DBE-certified firm with CDOT contracting experience. The other two represented firms were in the process of DBE certification but had limited CDOT contracting experience.

The fourth and final roundtable with African American-owned firms was held on November 18<sup>th</sup> at the Blair-Caldwell African American Research Library in Denver. A list of invitees was developed from online survey respondents, the CDOT DBE directory and members of the Colorado Black Chamber of Commerce. A total of 19 African American business owners attended representing M/W/DBE-certified firms, all of which were subcontractors/subconsultants, and four other independent individuals. The session was primarily focused on the DBE program, barriers to contracting, bidding and discrimination.

### **7.2.3 Online Survey of Firms**

An online business survey was launched on May 2, 2008 and remained open to collect responses until July 31, 2008. Best practice procedures were followed in developing, testing and collecting the online survey data.

The Disparity Study Team researched federal, state and municipal government resources that had databases containing contact information on Colorado businesses. Key agencies, such as the U.S. Small Business Administration, CDOT, RTD, City and County of Denver, Denver Economic Development Council, Colorado Small Business Development Centers, regional Chambers of Commerce and local business and community organizations were contacted regarding available databases and email address sources. Additionally, a list of participants from the 1998 CDOT Disparity Study was added to the master database. The total number of email contacts collected for notification of the survey was 7,490.

A draft survey instrument developed by the project team for the business survey; minor changes were made to accommodate an online survey format. Additional changes were recommended after comments were received by small businesses in the first two weeks after the survey launched. These included small adjustments that clarified the required and non-required questions to facilitate more participation by a wider audience. The online survey was developed using SurveyMonkey.com, a commercially-available software application. This tool allowed for custom branded design of the survey instrument, flexible online collection methods and advanced filtering and analysis. A printed PDF copy of the online survey is included in Appendix B.

An email invitation was created to invite small business owners to participate in the online business survey. A commercially-available email management tool, Constant Contact, was used to develop, distribute, track and manage bounces. The email was distributed on May 2, 2008 and included an overview of the Study with a link to the online survey. This was distributed to the business database list of 7,490 recipients. A second version of the email was

created and sent to local business and community organizations requesting that they forward the information to their members and colleagues. A reminder email was sent May 15, 2008 to business owners and organizations and a final email was delivered to the entire database list on June 15, 2008. Additionally, a postcard was created and delivered on June 5, 2008 to all Colorado-certified DBE and ESB firms requesting that they take part in the online survey. A link to the survey was also included on the CDOT DBE webpage ([www.dot.state.co.us/EEO/DBEProgramPage.htm](http://www.dot.state.co.us/EEO/DBEProgramPage.htm)) and the webpage of Folsom Point LLC ([www.folsompoint.com](http://www.folsompoint.com)).

The survey included 46 questions, many of them open-ended, which allowed a substantial amount of qualitative data to be obtained, in addition to the quantitative business information. Including the data obtained from the online survey as one of the methods for supporting anecdotal evidence allowed D. Wilson Consulting Group to compare the general information provided by hundreds of business owners with the detailed information provided by the firms that conducted in-depth personal interviews.

The questions asked in the online survey were divided into four categories. First, general demographic and availability/capacity questions were asked about the business, ownership and bonding and insurance levels. This provided a basic business profile for the businesses that were surveyed and interviewed, and helped to determine how many of the businesses surveyed had the ability to do business with CDOT.

The next set of questions related specifically to the CDOT DBE and ESB programs. Business owners were asked about their knowledge and opinion of the programs. If a respondent indicated that they had received technical assistance through either one of these programs, then additional follow up questions were asked regarding their experiences.

The third set of questions addressed possible barriers that business owners may have encountered attempting to do business with CDOT. The business owners were provided a list of possible barriers and were asked if they had experienced any of the barriers when attempting to do business with the CDOT. The results showed that many of the barriers identified were the same as those discussed in depth by business owners during the personal interviews and roundtables and testified to during the public hearings.

The last set of questions addressed possible discriminatory practices of prime contractors. If the respondent indicated that they had submitted a bid or received a contract as a subcontractor/subconsultant, they were asked whether they had experienced certain business practices with prime contractors. The results of these questions were consistent with the anecdotal information obtained during personal interviews and public hearings.

Once the survey was implemented, responses were automatically collected and stored in an online database. The Disparity Study Team managed all email and phone questions related to the survey. In some cases, a hard copy of the survey was mailed to individuals who made a request to complete it on paper. Responses that were mailed back were manually entered into the online survey by the Disparity Study Team so that all data could be tabulated using the automated survey tool.

A total of 723 individuals took part in the survey. Only one survey per ISP address was allowed to eliminate duplicates. The survey was anonymous and did not require that the individual provide contact information. However, respondents were asked to provide contact information if they were interested in participating in a personal interview, roundtable or public hearing. Additionally, not all questions were required which allowed respondents to skip questions and only complete required business information. Lastly, respondents were able to leave the survey at any time without completing to the end. A total of 465 of the 723 (64.3%) who initiated the survey completed the entire survey. Final survey responses, less duplicates, were reviewed and forwarded to the team statistician for analysis on July 8, 2008.

#### **7.2.4 Personal Interviews**

One-on-one personal interviews were also conducted to gather more qualitative data and elicit examples of specific incidents of discrimination on the basis of ethnicity and gender. The purpose of these interviews was much the same as the online business survey. However, the longer interview length and personal interview setting were designed to allow for more in-depth responses from business owners.

An interview guide was developed that covered a range of questions concerning a firm's experiences conducting business with CDOT, experiences contracting with general contractors on CDOT projects, the firm's business operations and instances of discrimination.

The Disparity Study Team used contact information from the online survey to identify a variety of business owners to contact for personal interviews. Additionally, a registration form was created using 123Signup.com, a commercially-available online registration tool, to allow individuals to sign up for an interview. Links to the registration form were placed on the CDOT DBE webpage ([www.dot.state.co.us/EEO/DBEProgramPage.htm](http://www.dot.state.co.us/EEO/DBEProgramPage.htm)), a webpage on the Folsom Point website ([www.folsompoint.com](http://www.folsompoint.com)) and in the outreach flyers that were distributed at various meetings. Each registrant was asked to complete the online survey form prior to the interview to assist with data collection of basic business information.



The contact list culled from these sources included the name of the business, business classification, contact name, email address, phone number and mailing address, if available. The list was separated into businesses located within driving distance along the Front Range (Colorado Springs, Denver and Fort Collins) for an in-person interview. A separate list was created of businesses in outlying areas of Colorado and out-of-state firms for phone interviews.

Each business was contacted by phone requesting participation in the Study by means of a personal interview. An interview script was developed for the initial call which included pre-qualification questions and an overview explaining the purpose of the Study and the importance of participating in a personal interview. Interviews were scheduled to take place at the business owner's office or at a neutral setting that was convenient for the interviewee. If requested, the interview was conducted via phone.

During the scheduling process, the Disparity Study Team sent an email follow up or called to confirm the appointment date/time with each business owner. Prior to each interview, the interviewer was provided with a completed copy of the individual's online survey. The interviewer used this to pre-fill answers to many of the questions on the interview guide and then verified the answers with the business owner during the interview. This reduced the total amount of time required for the interview.

In collecting the anecdotal evidence, a standard introductory script was used by all interviewers for consistency. The interviewers made no attempts to prompt or guide the testimony or responses of individuals but they identified whether any interviewee related any discriminatory practices or lack of discriminatory practices within the relevant market area.

The goal was to conduct a total of 75 – 100 interviews. In total, 85 interviews were conducted either in person or via phone. The results of 84 interviews are included in the interview findings. The results of one interview were not included because the business owner terminated the telephone interview.

The contacted firms represented a cross section of firms in highway construction, design and engineering services. Of the total one-on-one interviews, 58 DBE firms were interviewed from the following racial/ethnic groups: 13 African American firms, two Native American/Alaska Native firms, three Asian firms, 16 Hispanic firms, two "Other" firms (self-classified as East Indian) and 22 White woman-owned firms. Of the remaining, 27 non-DBE certified firms interviewed, there were two Hispanic-owned firms, seven White woman-owned firms, and 18 White male-owned firms.

Each interview was conducted via phone, on-site at the owner's office or at a location selected by the owner. The interviews averaged 1-½ hours in length with some as short as one

half hour and some as long as four hours. All but three of the interviews were recorded on tape and later transcribed or saved as a digital audio file. The three that were not recorded were done so at the owner's request. Handwritten and types notes from the interviewer were used for the analysis.

Before each interview, business owners were informed that their responses to the questionnaire would be confidential and would not be distributed to any other firm with their identity revealed, except in the event of a legal action, in which case all documentation would be provided to the court. At the conclusion of the interviews, business owners were asked to sign an affidavit attesting that the information provided during the interview was freely given, true and not coerced and that it reflected the firms' contracting and procurement experiences with CDOT or CDOT prime contractors.

### **7.2.5 Barriers to Obtaining Anecdotal Testimony**

The contracting climate in Colorado presented a few barriers to obtaining anecdotal testimony for this Study. The primary issue was locating willing DBE participants in outlying areas of the state that performed work in the work categories considered for the Study. We received good response from firms located in Denver metro and along the Front Range (from Pueblo to Greeley) but it proved difficult to arrange interviews with firms in eastern Colorado (CDOT Region 1), southeastern Colorado (CDOT Region 2, with the exception of Pueblo and El Paso counties), northeastern (CDOT Region 4, with the exception of Greeley and Fort Collins), and the western slope (CDOT Region 3). One reason for this was the limited number of DBE firms (less than 10) located in each of those areas. We were able schedule a roundtable with firms located in CDOT Region 5 (Durango), although as mentioned previously, only five of 13 confirmed business owners participated.

The team also experienced difficulty obtaining feedback from Asian-owned and Native Hawaiian or Pacific Islander-owned firms. With Asian-owned firms, 19 participated in the online survey. However, we were only able to obtain an interview with two business owners in this ethnic group that provided services in areas considered by this Study. We found that almost all of the Asian-owned firms we contacted were reluctant to be interviewed "on the record." We were not able to obtain interviews with any Native Hawaiian or Pacific Islander-owned firms and only one business owner in this race/ethnicity category completed the online survey.

It is important to note that CDOT classifies DBE ethnicity as "Asian-Indian" and "Asian-Pacific." This differs from the Census standard for race/ethnicity which was used for the online survey and the interviews. The race/ethnicity category of "Asian" for this Study includes people

having an origin of peoples from the Far East, Southeast Asia, or the Indian subcontinent including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. It includes 'Asian Indian,' 'Chinese,' 'Filipino,' 'Korean,' 'Japanese,' 'Vietnamese,' and 'Other Asian. The race/ethnicity category of "Native Hawaiian or Pacific Islander" includes people with an origin of peoples of Hawaii, Guam, Samoa, or other Pacific Islands. It also includes people who indicate their race as 'Native Hawaiian', 'Guamanian or Chamorro', 'Samoan', and 'Other Pacific Islander'. At the time of the Study, there were only 12 Asian Indian-owned DBE firms and 29 Asian Pacific-owned DBE firms listed in the CDOT directory with the work codes considered for this Study. The small population of Asian-owned DBE firms in Colorado made it difficult to identify willing Study participants.

We also experienced difficulty obtaining feedback from Native American-owned firms. Of the 11 total Colorado DBE-certified Native American-owned firms listed at the time of the Study as providing services in highway construction, design or engineering, two were interviewed. There were 18 total online survey responses from Native-American firms (seven DBE and 11 non-DBE firms).

Overall, the willingness of business owners to participate in personal interviews varied among ethnic groups. Black-owned, Hispanic-owned, White male-owned and White woman-owned firms seemed to be the most comfortable talking with interviewers regarding issues of discrimination. However, as stated above, this was not the case with Asian-owned, Native Hawaiian or Pacific Islander-owned or Native American-owned businesses. During the personal interviews, many DBEs expressed concern about whether they would be ostracized from CDOT or the majority contracting community if it was determined that they discussed negative contracting experiences. They did not want to risk future contracting opportunities. In fact, four of the interviewees (race/ethnicity categorized as Native American, Other (Middle Eastern), Hispanic and White) requested that the interviewer not tape record the session.

For those firms that were contacted and chose *not* to participate, the most frequently heard complaint was that the Study and CDOT DBE goals were "a waste of time and taxpayers' money" because they felt the DBE Program did not benefit their business. The most frequently lodged comment by all individuals asked to participate was whether the Study would actually have any impact on CDOT's contracting practices and if things would change based upon their feedback. Many of the subcontractors, regardless of race/ethnicity indicated that it was the middle of their busy season which made it difficult to get their time.

Because of these concerns, caution has been taken to ensure that businesses cannot be identified based upon the owners' statements. This report does not provide business owners

names, specifics about the type of work their company performs or the city where the firm is located. The firms are identified by the race/ethnicity or gender of the owner and the general business category.

The following anecdotal analysis is a compilation of findings from the online business survey, public hearings, focus groups and personal interviews.

### **7.3 Business Analysis**

The business survey captured general characteristics about the business and asked questions related to contracting barriers, opinions relative to CDOT DBE and ESB programs, discrimination and business practices that may have prevented the business from obtaining work with CDOT. Overall, the anecdotal evidence supports the statistical findings that minority and woman-owned businesses throughout Colorado are suffering business-related discrimination at a statistically greater frequency than White male-owned firms.

Representatives from 723 firms participated in the survey and 465 completed the survey to the end (64.3%). Because not all questions in the survey were required, some respondents did not answer certain questions and therefore *n* values (total respondents) vary in the exhibits below. In some cases the *n* value reflects a number much lower than the total number of firms represented in the survey. Also, one of the areas of interest in this analysis was the level of similarity and difference between business owner groups categorized by race/ethnicity/gender. In that regard, responses from survey participants who provided insufficient information for race/ethnicity/gender categorization were excluded from analysis.

#### **7.3.1 Business Characteristics**

The following tables summarize the questions designed to establish a business profile for the businesses surveyed. The business profile questions asked focused on the following areas: primary line of business, number of years in business, organizational structure, race/ethnicity of controlling partner or owner, gender of controlling partner or owner; years of experience of owner, highest level of education completed by owner, total number of employees and gross receipts.

### Primary Line of Business

Participants were given the option to select from several subgroups of highway construction (CDOT Section 2 work codes) and design services (CDOT Section 4 work codes) to describe their respective lines of business. The individual choices are shown in the survey instrument which is included in Appendix B of this report.

There were a total of 504 survey participants that answered the question asking which construction services their company provided. 361 people selected at least one area in construction while the remaining 143 selected “none.” A total of 505 participants answered the question asking which design services their company provided. 284 people selected at least one area in design while the remaining 221 selected “none.” 63 participants responded with “none” to both categories indicating that their firm provided products/services other than construction or design (e.g., professional services). **Table 7-1** below provides a summary of the number of companies working in either construction, design or both.

**Table 7-1**  
**Primary Line of Business**

Type of Work	Total
Construction	56.6% (361)
Design	43.4% (284)
<b>Total</b>	<b>645</b>

The tally of frequencies (n=645) reflects a total greater than the actual number of firms that completed the survey because most construction firms indicated an ability to provide design services and vice versa. In total, there were slightly more responses from firms providing construction services than those providing design services. The overlap in services and lack of major distinction between business categories precludes in-depth discussion of the unique characteristics of firms by line of business.

Another way to look at the primary line of business is to evaluate the number of respondents categorizing themselves as contractors versus consultants. **Table 7-2** below shows that there were almost twice as many contractors (51.8% combined prime and sub) responding as consultants. It is significant to note that Black, Native American, Hispanic and woman-owned firms primarily categorized themselves as subcontractors. Only Asian-owned firms had a higher total number of consultants (prime and sub) than contractors (prime and sub). Meanwhile, White

male-owned firms were fairly equal in representation between contractor and consultant. Generally, these firms were either prime contractors or subconsultants.

**Table 7-2**  
**Contractors vs. Consultants**

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Prime Contractor	21.1% (4)	10.6% (5)	12.5% (7)	11.8% (2)	0.0% (0)	12.0% (14)	28.1% (34)	13.9% 66
Sub Contractor	15.8% (3)	63.8% (30)	73.2% (41)	64.7% (11)	0.0% (0)	53.0% (62)	27.3% (33)	37.9% (180)
Prime Consultant	15.8% (3)	4.3% (2)	0.0% (0)	0.0% (0)	0.0% (0)	4.3% (5)	12.4% (15)	5.3% (25)
Sub Consultant	47.4% (9)	21.3% (10)	14.3% (8)	23.5% (4)	100.0% (1)	30.8% (36)	32.2% (39)	22.5% (107)
<b>Total</b>	<b>19</b>	<b>47</b>	<b>56</b>	<b>17</b>	<b>1</b>	<b>117</b>	<b>121</b>	<b>378</b>

**Years in Business**

As **Table 7-3** on the following page shows, firms represented in the survey tended to be newer firms in operation for 10 years or less. More than half of all firms were in this group and nearly 30 percent had been in business for less than 5 years. There was a natural descending order as the age of the firm progressed with the 11 – 20 year group representing the next highest in frequency (22%) and the 21 – 30 year group dropping off more markedly (13%).

Almost three-quarters of all firms surveyed had been in business less than 20 years. It is important to note that only the White male-owned firms had any significant presence in the group with over 30 years in business. Very few of the Black, Asian or Hispanic firms responding had been in business longer than 30 years. Only White male-owned firms and a couple of White woman-owned firms had been in business for more than 50 years.

**Table 7-3  
Years in Business**

Years in Business	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
0-5	61.1% (11)	27.1% (13)	34.5% (20)	61.1% (11)	100.0% (1)	30.1% (37)	17.1% (21)	29.3% (114)
6-10	16.7% (3)	22.9% (11)	25.9% (15)	16.7% (3)	0.0% (0)	21.1% (26)	24.4% (30)	22.6% (88)
11-20	0.0% (0)	29.2% (14)	20.7% (12)	0.0% (0)	0.0% (0)	32.5% (40)	16.3% (20)	22.1% (86)
21-30	22.2% (4)	18.8% (9)	13.8% (8)	5.6% (1)	0.0% (0)	8.9% (11)	13.8% (17)	12.9% (50)
31-40	0.0% (0)	2.1% (1)	1.7% (1)	16.7% (3)	0.0% (0)	4.1% (5)	13.8% (17)	6.9% (27)
41-50	0.0% (0)	0.0% (0)	3.4% (2)	0.0% (0)	0.0% (0)	1.6% (2)	5.7% (7)	2.8% (11)
51+	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	1.6% (2)	8.9% (11)	3.3% (13)
<b>Total</b>	<b>18</b>	<b>48</b>	<b>58</b>	<b>18</b>	<b>1</b>	<b>123</b>	<b>123</b>	<b>389</b>

**Years of Experience**

For all ethnic groups, the largest percentage of owners had between 11 – 20 years of experience. As a result, the majority of owners were very familiar with the industry in which they worked. When comparing this result to responses concerning years in business, it is apparent that some of the respondents formed businesses recently but have been working in their individual industries for a sustained period. Only White male-owned firms had the highest respondent rate in the 31 – 40 years of experience category.

**Table 7-4** below provides a breakdown by race/ethnicity of the level of work experience accumulated by the majority owner of each responding business.

**Table 7-4  
 Business Owner Experience**

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
0-10	5.3% (1)	20.8% (10)	22.4% (13)	17.6% (3)	0.0% (0)	26.2% (32)	6.7% (8)	17.4% (67)
11-20	36.8% (7)	31.3% (15)	34.5% (20)	35.3% (6)	0.0% (0)	33.6% (41)	23.3% (28)	30.4% (117)
21-30	26.3% (5)	27.1% (13)	34.5% (20)	17.6% (3)	100.0% (1)	26.2% (32)	30.0% (36)	28.6% (110)
31-40	26.3% (5)	16.7% (8)	5.2% (3)	23.5% (4)	0.0% (0)	12.3% (15)	34.2% (41)	19.7% (76)
41+	5.3% (1)	4.2% (2)	3.4% (2)	5.9% (1)	0.0% (0)	0.0% (0)	4.2% (5)	2.8% (11)
Don't Know	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	1.6% (2)	1.7% (2)	1.0% (4)
<b>Total</b>	<b>19</b>	<b>48</b>	<b>58</b>	<b>17</b>	<b>1</b>	<b>122</b>	<b>120</b>	<b>385</b>

**Highest Level of Education Completed by the Firm's Owner**

College graduates and post graduates had the highest number of responses for the owner's level of education. Together these made up more than 67 percent of the total responses. Asian-owned firms had the highest percentage of post-graduates. Only 12 percent of respondents never attended college. This is evidence that a majority of business owners have completed college or graduate school and this level of education may contribute to a company's success.

**Table 7-5** below provides a breakdown by race/ethnicity of the education level acquired by the majority owner of each responding business.



**Table 7-5  
Business Owner Education Level**

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Some High School	0.0% (0)	0.0% (0)	6.9% (4)	0.0% (0)	0.0% (0)	1.6% (2)	0.8% (1)	1.8% (7)
High School graduate	10.5% (2)	8.3% (4)	17.2% (10)	5.9% (1)	0.0% (0)	9.8% (12)	8.3% (10)	10.1% (39)
Some College	0.0% (0)	16.7% (8)	13.8% (8)	29.4% (5)	0.0% (0)	22.0% (27)	10.7% (13)	15.8% (61)
College Graduate	26.3% (5)	29.2% (14)	44.8% (26)	23.5% (4)	100.0% (1)	39.0% (48)	43.0% (52)	38.8% (150)
Post Graduate	63.2% (12)	41.7% (20)	15.5% (9)	29.4% (5)	0.0% (0)	23.6% (29)	29.8% (36)	28.7% (111)
Trade or Technical Certificate	0.0% (0)	4.2% (2)	1.7% (1)	11.8% (2)	0.0% (0)	1.6% (2)	4.1% (5)	3.1% (12)
Don't Know	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	2.4% (3)	3.3% (4)	1.8% (7)
<b>Total</b>	<b>19</b>	<b>48</b>	<b>58</b>	<b>17</b>	<b>1</b>	<b>123</b>	<b>121</b>	<b>387</b>

Business owners that responded to the survey were more likely to be college graduates based on the frequency and percentage of responses from all firms. By individual category, the analysis shows that African American and Asian American firm owners were more likely to have post-graduate degrees. Looking across all categories, business owners in the state of Colorado were overwhelmingly more likely to have had some college training, a college degree, or post-graduate education.

#### **Firm Size**

Regardless of race/ethnicity or gender of the business owner, the vast majority of firms that completed the survey were small businesses with almost three-quarters of all businesses reporting having 20 or less full time employees and 43 percent of the total having five or fewer full time employees. Only 7.8 percent of responding firms had more than 50 employees. This is not surprising since small businesses are the most occurring size of business establishment. According to the latest data from the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB), 90 percent of all firms in the U.S. have less than 20 employees and 99 percent of U.S. firms have less than 100 employees.

Of the firms 23 surveyed had 101 or more employees, 19 were White male-owned. This information is consistent with that found in the demographics of the firms who participated in the personal interviews. **Table 7-6** below shows a breakdown of firm size by race/ethnicity.

**Table 7-6**  
**Size of Firms**

Full Time	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
0-5	42.1% (8)	57.5% (27)	43.1% (25)	38.9% (7)	100.0% (1)	50.0% (62)	31.1% (38)	43.2% (168)
6-10	10.5% (2)	19.1% (9)	17.2% (10)	11.1% (2)	0.0% (0)	17.7% (22)	13.9% (17)	15.9% (62)
11-20	5.2% (1)	14.9% (7)	22.4% (13)	0.0% (0)	0.0% (0)	17.7% (22)	14.7% (18)	15.7% (61)
21-30	0.0% (0)	2.1% (1)	3.4% (2)	33.3% (6)	0.0% (0)	7.3% (9)	7.4% (9)	6.9% (27)
31-50	31.6% (6)	6.4% (3)	6.9% (4)	5.5% (1)	0.0% (0)	4.9% (6)	9.8% (12)	8.2% (32)
51-100	10.5% (2)	0.0% (0)	6.9% (4)	0.0% (0)	0.0% (0)	0.8% (1)	7.4% (9)	4.1% (16)
101-250	0.0% (0)	0.0% (0)	0.0% (0)	5.5% (1)	0.0% (0)	0.0% (0)	4.1% (5)	1.5% (6)
251-500	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	6.5% (8)	2.1% (8)
501-10,000	0.0% (0)	0.0% (0)	0.0% (0)	5.5% (1)	0.0% (0)	0.8% (1)	3.3% (4)	1.5% (6)
10,001+	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.8% (1)	1.6% (2)	0.7% (3)
<b>Total</b>	<b>19</b>	<b>47</b>	<b>58</b>	<b>18</b>	<b>1</b>	<b>124</b>	<b>122</b>	<b>389</b>

**Gross Receipts**

**Table 7-7** below summarizes the gross receipts of respondent firms for 2007. One-quarter of all respondents reported annual revenues between \$1 million and \$3 million in fiscal year 2007. Following those responses, the next highest frequency is seen in the \$100,001 to \$300,000 category.

**Table 7-7  
Gross Receipts**

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
\$50,000 or less	5.3% (1)	19.1% (9)	5.2% (3)	5.6% (1)	0.0% (0)	10.7% (13)	6.7% (8)	9.3% (35)
\$50,001 - \$100,000	5.3% (1)	17.0% (8)	22.4% (13)	0.0% (0)	0.0% (0)	9.8% (12)	5.0% (6)	10.6% (40)
\$100,001 - \$300,000	21.1% (4)	25.5% (12)	6.9% (4)	16.7% (3)	0.0% (0)	13.9% (17)	10.8% (13)	14.1% (53)
\$300,001 - \$500,000	15.8% (3)	8.5% (4)	10.3% (6)	5.6% (1)	100.0% (1)	4.1% (5)	8.3% (10)	7.9% (30)
\$500,001 - \$1,000,000	5.3% (1)	6.4% (3)	10.3% (6)	5.6% (1)	0.0% (0)	14.8% (18)	10.0% (12)	10.9% (41)
\$1,000,001 - \$3,000,000	15.8% (3)	14.9% (7)	22.4% (13)	50.0% (9)	0.0% (0)	30.3% (37)	22.5% (27)	25.5% (96)
\$3,000,001 - \$5,000,000	10.5% (2)	6.4% (3)	13.8% (8)	5.6% (1)	0.0% (0)	10.7% (13)	4.2% (5)	8.5% (32)
\$5,000,001 to \$10,000,000	21.1% (4)	2.1% (1)	5.2% (3)	0.0% (0)	0.0% (0)	2.5% (3)	11.7% (14)	6.7% (25)
\$10,000,001 to \$20,000,000	0.0% (0)	0.0% (0)	1.7% (1)	0.0% (0)	0.0% (0)	0.0% (0)	4.2% (5)	1.6% (6)
More than \$20,000,000	0.0% (0)	0.0% (0)	0.0% (0)	5.6% (1)	0.0% (0)	3.3% (4)	10.8% (13)	4.8% (18)
<b>Total</b>	<b>19</b>	<b>47</b>	<b>57</b>	<b>17</b>	<b>1</b>	<b>122</b>	<b>113</b>	<b>376</b>

Only White male-owned firms, women-owned firms and one Alaska Native Corporation (Native American) had revenues of more than \$20 million. Conversely, of the Hispanic-owned firms surveyed, the largest percentage of responding businesses had gross revenues of \$50,000 to \$100,000 (13%). Black-owned firms were more likely to generate revenues of \$100,000 to \$300,000. The highest percentage of revenues for black-owned firms was between \$1 million and \$3 million with most black-owned firms making less than \$300,000 (62%).

### **7.3.2 Comparison of M/W/DBE and non-M/W/DBE Firm Demographics**

Even though the majority of firms surveyed were small businesses with less than five employees, non-M/W/DBE firms generally had higher gross revenues and had been in business longer than the M/W/DBE firms. It is evident that minority and woman-owned firms are younger, on average, than their non-minority male-owned counterparts. While 35 (28 percent) of the non-M/W/DBE firms had been in business more than 30 years, none of the Asian-owned firms, only one Black-owned, three Hispanic and three Native American-owned firms had been in business more than thirty years. Just six percent of the M/W/DBE firms including woman-owned firms had been in business more than 30 years.

Regarding firm size, it is also evident that on average, M/W/DBE firms were smaller than White male-owned firms. Nearly 23 percent of White male-owned firms had more than 50 employees while only four percent of all M/W/DBE firms were that size. And, although the majority of all firms surveyed had fewer than five employees, nearly 64 percent of minority-owned firms and 68 percent of woman-owned firms had less than 10 full-time employees compared to 45 percent for White male-owned firms.

As with firm size, M/W/DBE firms are over-represented among small firms and under-represented among larger ones. Across the board, the firms with higher gross revenues were White male-owned firms. Other than Asian-owned firms, M/W/DBE firms had gross revenues significantly lower than White male-owned firms. More than 46 percent of M/W/DBE firms reported gross revenues of less than \$500,000 in 2007 as compared to 32 percent of White male-owned firms. At the upper end of the gross revenue scale, the reverse is true – only six percent of M/W/DBE firms earned more than \$5 million in 2007 versus 28 percent of non-M/W/DBE firms. As mentioned previously Asian-owned firms did have better representation in higher revenue categories, however, few representatives of this demographic provided gross annual revenue numbers. Therefore, there was not great differentiation in the responses because of the low number reporting. The same situation existed for firms owned by Native Americans and Native Hawaiian or Pacific Islanders. There was little value in analyzing results for these groups since those results would be so greatly influenced by the responses of singular responses.

Although it has been suggested that lack of qualifications, rather than discrimination, is the reason for observed adverse disparities facing M/W/DBE firms, the findings related to the highest level of education reached by the firm's primary owner provides evidence to the contrary. M/W/DBE firms were, on average, equally as educated as White male-owned firms. Asian-owned firms were the most educated with almost 90 percent having obtained college or

post-graduate degrees. Black-owned firms also had a high number (70 percent) reporting secondary education at almost the same rate (73 percent) as White male-owned firms. Woman-owned and Native American-owned firms fell slightly behind but again the majority in these race/ethnic groups had reached college or post-graduate levels. Only Hispanic-owned firms had generally less education than all other groups surveyed but still more than 60 percent reported having secondary education.

### **7.3.3 Willingness of Firms to Contract in the Public Sector**

The value of anecdotal evidence of discrimination increases when it comes from firms that have actually worked or attempted to work for the public sector. On the business survey, firms were asked how many public and private projects they had submitted a bid for and how many contracts they received during 2007. A total of 370 firms provided information regarding their contracting activities.

**Table 7-8** below shows that 67 percent of firms had attempted to work as prime contractor by submitting a bid on a public sector project and 69.8 percent had received a contract. These percentages were slightly higher than the number of prime contractor bids and contracts received by firms in the private sector. More of the firms responding (75 percent) had submitted a bid on a public sector project as a subcontractor. However, a slightly smaller percentage of these (69.5 percent) had actually received a public contract. In general, there were a higher percentage of firms that had attempted to subcontract in the public sector than the private sector.

**Table 7-8  
Public and Private Contracting**

<b>Prime</b>	<b>None</b>	<b>1-5</b>	<b>6-10</b>	<b>11-15</b>	<b>16-20</b>	<b>21-25</b>	<b>&gt; 25</b>	<b>Totals</b>
Number of public (government) bids	33.1% (82)	32.7% (81)	13.7% (34)	2.8% (7)	5.2% (13)	2.0% (5)	10.5% (26)	248
Number of public contracts	30.2% (71)	48.9% (115)	8.1% (19)	4.7% (11)	1.3% (3)	0.0% (0)	6.8% (16)	235
Number of private sector bids	28.7% (68)	25.3% (60)	9.7% (23)	6.8% (15)	5.1% (12)	1.7% (4)	22.8% (54)	237
Number of private contracts	26.6% (62)	30.0% (70)	12.0% (28)	6.4% (15)	1.7% (4)	1.7% (4)	21.5% (50)	233
<b>Subcontractor</b>	<b>None</b>	<b>1-5</b>	<b>6-10</b>	<b>11-15</b>	<b>16-20</b>	<b>21-25</b>	<b>&gt; 25</b>	<b>Totals</b>
Number of public (government) bids	24.7% (71)	30.0% (86)	11.5% (33)	8.4% (24)	5.6% (16)	1.7% (5)	18.1% (52)	287
Number of public contracts	30.5% (84)	40.0% (110)	10.9% (30)	3.6% (10)	2.9% (8)	1.8% (5)	10.2% (28)	275
Number of private sector bids	21.2% (55)	26.6% (69)	12.4% (32)	6.2% (16)	2.7% (7)	2.7% (7)	28.2% (73)	259
Number of private contracts	25.9% (68)	29.3% (77)	8.4% (22)	6.5% (17)	4.2% (11)	0.8% (2)	25.1% (66)	263

As shown in **Tables 7-9** and **7-10**, a majority of firms that responded to the survey had a fairly equal split in revenues received between public and private contracts. The amount of work done in the public sector was pretty evenly distributed with nearly half or 49.7 percent doing between 11 – 80 percent of their work in the public sector. Only 7 percent of respondents did not earn any revenue in the public sector. As reflected in the one-on-one interviews, most had a 50-50 or 60-40 percent split between public and private sector work. There was also a slight skew in public sector work toward 81 – 100 percent with nearly 30 percent of all respondents falling into this category. There were also 45 firms (13.2%) that received 100 percent of their work from public contracts.

**Table 7-9  
Percentage of Gross Receipts from Public Sector**

Public Sector % of Gross Receipts	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
0	5.5% (1)	9.8% (4)	3.8% (2)	13.3% (2)	0.0% (0)	5.7% (6)	8.3% (9)	7.0% (24)
1-10	10.5% (2)	4.9% (2)	19.2% (10)	6.8% (1)	0.0% (0)	17.0% (18)	13.0% (14)	13.7% (47)
11-40	26.3% (5)	24.4% (10)	19.2% (10)	13.3% (2)	0.0% (0)	17.0% (18)	30.6% (33)	22.8% (78)
41-80	36.8% (7)	26.8% (11)	28.8% (15)	26.7% (4)	0.0% (0)	22.6% (24)	28.7% (31)	26.9% (92)
81-99	15.8% (3)	7.3% (3)	21.2% (11)	6.7% (1)	100.0% (1)	22.6% (24)	12.0% (13)	16.4% (56)
100	5.3% (1)	26.8% (11)	7.7% (4)	33.3% (5)	0.0% (0)	15.1% (16)	7.4% (8)	13.2% (45)
<b>total</b>	19	41	52	15	1	106	108	342

**Table 7-10  
Percentage of Gross Receipts from Private Sector**

Private Sector % of Gross Receipts	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
0	5.3% (1)	3.0% (1)	3.8% (2)	25.0% (4)	0.0% (0)	6.5% (7)	3.5% (4)	5.5% (19)
1-10	10.5% (2)	3.0% (1)	23.1% (12)	6.3% (1)	0.0% (0)	18.5% (20)	11.3% (13)	14.2% (49)
11-40	21.1% (4)	24.2% (8)	17.3% (9)	25.0% (4)	100.0% (1)	21.3% (23)	18.3% (21)	20.4% (70)
41-80	47.4% (9)	42.4% (14)	26.9% (14)	18.8% (3)	0.0% (0)	22.2% (24)	28.7% (33)	28.2% (97)
81-99	10.5% (2)	6.1% (2)	17.3% (9)	0.0% (0)	0.0% (0)	16.7% (18)	20.0% (23)	15.7% (54)
100	5.3% (1)	21.2% (7)	11.5% (6)	31.3% (5)	0.0% (0)	14.8% (16)	18.3% (21)	16.3% (56)
<b>total</b>	19	33	52	16	1	108	115	344

With nearly 70 percent of all responding firms surveyed indicating that they had received a prime contract or subcontract in the public sector, it is important to review the level of contracting activity in transportation. As show in **Table 7-11** below, the majority (52 percent) of

all contracts were valued at less than \$100,000. This was consistent regardless of race/ethnicity or gender with the exception of Native American firms which had a slightly higher number of respondents (7) indicating that they the highest transportation contract they had received was between \$2,000,001 and \$5,000,000. It is also interesting to note that only White male-owned firms (7) and Black-owned firms (2) had received a transportation contract for more than \$20,000,000.

**Table 7-11**  
**Size of Transportation Contracts**

Value of Largest Transportation Contract	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
\$100,000 or less	46.7% (7)	43.6% (17)	61.5% (32)	29.4% (5)	100.0% (1)	52.8% (56)	52.7% (59)	51.5% (177)
\$100,001-\$500,000	13.3% (2)	28.2% (11)	21.2% (11)	11.8% (2)	0.0% (0)	25.5% (27)	14.3% (16)	20.2% (69)
\$500,001-\$1,000,000	6.7% (1)	10.3% (4)	3.8% (2)	5.9% (1)	0.0% (0)	8.5% (9)	3.6% (4)	6.1% (21)
\$1,000,001-\$2,000,000	13.3% (2)	5.1% (2)	9.6% (5)	0.0% (0)	0.0% (0)	7.5% (8)	6.3% (7)	7.0% (24)
\$2,000,001-\$5,000,000	0.0% (0)	2.6% (1)	1.9% (1)	41.2% (7)	0.0% (0)	2.8% (3)	9.8% (11)	6.7% (23)
\$5,000,001-\$10,000,000	6.7% (1)	5.1% (2)	0.0% (0)	11.8% (2)	0.0% (0)	0.9% (1)	3.6% (4)	2.9% (10)
\$10,000,001-\$20,000,000	13.3% (2)	0.0% (0)	1.9% (1)	0.0% (0)	0.0% (0)	1.9% (2)	3.6% (4)	2.6% (9)
More than \$20,000,000	0.0% (0)	5.1% (2)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	6.3% (7)	2.6% (9)
<b>total</b>	15	39	52	17	1	106	112	342

**7.3.4 Availability of Firms to Perform on CDOT Contracts**

The value of anecdotal evidence also increases when it comes from firms that have the financial, management and workforce resources to do work for CDOT either as a prime contractor, subcontractor or both. As shown in **Table 7-12**, the majority of respondents (45 percent) indicated that they would be more fit as a subcontractor but almost as many firms said that they could be both a prime contractor and subcontractor.



Black-owned, Hispanic-owned and woman-owned firms were more apt to consider themselves as subcontractors. Asian-owned firms, Native American-owned firms and White male-owned firms were more apt to say that they could perform in both roles. Again, the response rate from Native Hawaiian or Pacific Islander-owned firms was too low to be statistically significant.

Interestingly, 29 or 7.5 percent of all individuals responding to this question indicated that they would not be qualified as either. The format of the survey did not facilitate probing into the basis for this feeling.

**Table 7-12**  
**Ability to Prime or Subcontract**

<b>Prime or Subcontractor</b>	<b>Asian</b>	<b>Black</b>	<b>Hispanic</b>	<b>Native American</b>	<b>Pacific Islander</b>	<b>White Woman</b>	<b>White Male</b>	<b>Totals</b>
Prime Contractor	0.0% (0)	8.3% (4)	14.3% (8)	5.6% (1)	0.0% (0)	6.6% (8)	9.9% (12)	8.6% (33)
Subcontractor	31.6% (6)	43.8% (21)	64.3% (36)	33.3% (6)	0.0% (0)	51.6% (63)	34.7% (42)	45.2% (174)
Both	63.2% (12)	39.6% (19)	16.1% (9)	55.6% (10)	100.0% (1)	33.6% (41)	47.1% (57)	38.7% (149)
Neither	5.3% (1)	8.3% (4)	5.4% (3)	5.6% (1)	0.0% (0)	8.2% (10)	8.3% (10)	7.5% (29)
<b>total</b>	<b>19</b>	<b>48</b>	<b>56</b>	<b>18</b>	<b>1</b>	<b>122</b>	<b>121</b>	<b>385</b>

Survey respondents were also asked in which CDOT regions their firm would be willing to work. This question was used to determine if firms were willing and able to travel outside of their primary office location to job sites in other areas of the state. Because respondents could select multiple choices, the total number of responses in each category was higher than the total number of survey participants.

**Table 7-13**  
**Availability to Work in CDOT Regions**

CDOT Regions	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
Region 1 – Mountain, Central and East	84.2% (16)	54.2% (26)	78.9% (45)	72.2% (13)	100.0% (1)	80.2% (97)	76.2% (93)	18.3% (291)
Region 2 – South and East	78.9% (15)	45.8% (22)	54.4% (31)	55.6% (10)	100.0% (1)	68.6% (83)	71.3% (87)	15.7% (249)
Region 3 – North and West	63.2% (12)	43.8% (21)	52.6% (30)	61.1% (11)	100.0% (1)	67.8% (82)	68.0% (83)	15.1% (240)
Region 4 – North and East	78.9% (15)	54.2% (26)	63.2% (36)	77.8% (14)	100.0% (1)	68.6% (83)	73.8% (90)	16.6% (265)
Region 5 – South and West	63.2% (12)	43.8% (21)	47.4% (27)	61.1% (11)	100.0% (1)	61.2% (74)	59.0% (72)	13.7% (218)
Region 6 – Greater Metro Denver	89.5% (17)	85.4% (41)	89.5% (51)	83.3% (15)	100.0% (1)	86.8% (105)	69.7% (85)	19.8% (315)
None of the above	0.0% (0)	0.0% (0)	1.8% (1)	11.1% (2)	0.0% (0)	3.3% (4)	4.1% (5)	0.1% (12)
<b>total</b>	<b>87</b>	<b>157</b>	<b>221</b>	<b>76</b>	<b>6</b>	<b>528</b>	<b>515</b>	<b>1590</b>

As shown in **Table 7-13**, the majority of firms indicated that they would be willing to work in CDOT Region 6 which encompasses greater metro Denver. This is expected given that a higher concentration of respondents was located in this region. For the most part, respondents were willing to work in all CDOT Regions as indicated by the slight variation of percentages within each race/ethnic group.

The exception was Black-owned firms that have a much lower frequency of responses in regions other than Region 6 meaning that most prefer not to work outside of the Denver metro area. Also interesting to note was that the greatest percentage of White male-owned firms selected Region 1 rather than Region 6 where all other firms had the highest frequency. This could be because Region 1 is a cross-section of the state that encompasses the widest range of area through the center of the state including the immediate areas around Denver metro.

Essentially, they chose to work in the mountains, as well as the central and eastern portions of the state, rather than limiting their work area to just Denver metro.

#### **7.4 General Opinions of the CDOT DBE and ESB Programs**

One of the research objectives of the anecdotal study was to gather public opinion about CDOT's current small business programs in support of Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBs). Survey questions and personal interviews were used to collect general feedback, as well as to determine the perceived value of the programs and the types of support services that would benefit small businesses in the future. The following information summarizes the findings about each of the programs.

##### **7.4.1 CDOT DBE Program**

All survey participants were asked to comment on their general opinion of the DBE Program. A total of 268 individuals offered responses. More in-depth opinions were provided by business owners that were interviewed. Of the 85 individuals personally interviewed, 58 were DBE-certified and 22 of those firms were also ESB-certified. Another 8 firms were ESBs but not DBEs, which made a total of 30 ESB firms interviewed. The following is a compilation of information collected from the business survey and interviews.

Slightly more than half (51.9 percent) of the certified firms interviewed felt that their DBE certification positively affected their ability to compete with other firms. In the words of a Hispanic woman-owned business, "Without them, I wouldn't be able to bid half this stuff. My phone didn't ring until I had the certifications." A Black DBE business owner talked about how the DBE program had positively affected his business by saying,

"It gives small business a chance to grow and compete in their community. The classes are very helpful and informative, the facilitators are most knowledgeable. Without the CDOT DBE Programs, I think small companies like ours would find it most difficult, if not impossible, to move forward."

It was also apparent from the survey that the majority of M/W/DBE firms felt that contracting with CDOT would not be available to them without the DBE Program. For a majority of M/W/DBE firms, the DBE Program allowed them to compete on public projects and it positively affected the growth of their business. A woman-owned firm attributed most of the success of her trucking company to the CDOT DBE Program. She said,

"We increased the amount of work that we did for CDOT through prime contractors, but only because we were a DBE. I can say that we would not have been looked at if we had not been a DBE."

On the other hand, close to half of the firms interviewed felt DBEs are looked upon negatively by larger firms. They believe a perception exists that DBE-certified firms are less qualified than non-DBE firms. One DBE-certified Black-owned business owner commented,

“There are negative stigma and stereotypes to the certifications. It helps in one regard because your only chance at doing work is as an MBE, WBE, but on the other hand, once you use those letters at the end of your name, you’re pigeonholed into what you can do, even though we are a prime contractor.”

This was felt more often when doing work in the private sector. A DBE-certified Native American business owner said,

“Sometimes when I pursue private work, the connotation is that, since I’m certified, I’m unqualified. I don’t always mention my certifications because it’s perceived as incompetence. It’s like, “As good as you think you are, why do you need certifications to get this work?” My feeling is that it’s another opportunity. I market differently for private vs. public work. I think most DBEs think the program is an entitlement program.”

Many prime contractors expressed frustrations with the DBE program. The complaints included not having enough certified firms to choose from outside the Denver metro area, CDOT not evaluating the DBEs availability before setting goals, and the process for evaluating a prime contractor’s good faith efforts.

In summary, most M/W/DBE respondents felt that the DBE program provided some benefit to their company in helping to open doors to contracting with CDOT that they would not have otherwise. Many said that they were contacted by prime contractors and/or asked to bid more frequently after they received DBE certification. However, there were numerous concerns raised about the disparity between the number of bids DBEs were providing and the amount of work that was actually being subcontracted after an award was made by CDOT. Also, many non-DBE small businesses and ESB-certified firms felt that that DBE program adversely impacted their business by precluding them from bid opportunities on contracts with a DBE goal. These barriers are discussed in more detail the section titled “*M/W/DBE Issues.*”

### **DBE Program Technical Assistance**

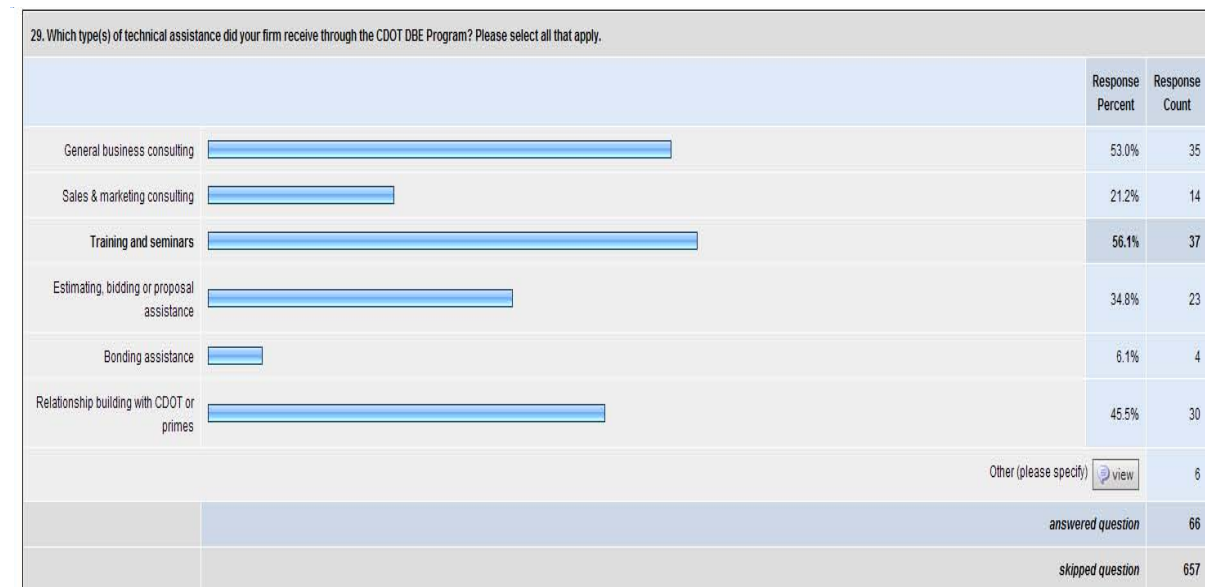
A total of 178 respondents to the survey indicated that they were certified as a DBE in the state of Colorado. Of the 364 individuals that answered the survey question as to whether they had received technical assistance from the DBE Program, 72 firms, or 20 percent of the total, responded that they had received some form of assistance. The following sections reveal how these individuals felt about the services and which services would be most helpful to their business in the future.

Of those that utilized DBE technical services, 70.8 percent indicated that it was helpful in assisting their company’s ability to do business with CDOT or other agencies. Many of the DBE

firms mentioned that they had taken advantage of training offered by CDOT. Several also said that they had received personalized help with questions related to certification, bid specifications and administrative/financial.




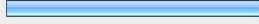
Only two of the people interviewed said that the assistance was not helpful and the primary reason given was that it was too basic/simple and it only helped to a certain point. Interestingly, 10 of the DBE firms interviewed commented that they either did not know that CDOT offered technical assistance or they had never asked whether such services were available. **Figure 7-1** below provides a summary of the types of technical assistance that DBE firms had received.

**Figure 7-1: DBE Technical Assistance**



As shown in **Figure 7-2** below, more than half of the respondents had received training and general business consulting services. Almost half had also been able to build relationships with CDOT or CDOT prime contractors through the DBE Program. More than half of the technical assistance was provided by either the Construction Development Center (CDC) or CDOT staff. The type of assistance with the lowest number of respondents was bonding assistance.

**Figure 7-2: DBE Technical Assistance Staff**

30. Who provided the technical assistance? Please check all that apply.		Response Percent	Response Count
CDOT staff		50.7%	35
Construction Development Center		55.1%	38
Prime contractor		10.1%	7
Outside consultant		29.0%	20
Other (please specify) <a href="#">view</a>			1
		<i>answered question</i>	69
		<i>skipped question</i>	654

Overall, respondents rated the technical services they received as “good” on a scale that ranged from “poor” to “excellent.” Generally, they felt the knowledge and availability of staff providing the services was “good” or “excellent.” The majority also felt that the quality of assistance was “good” or “excellent.” The willingness of staff to help received the highest rating and overall percentage with 42.9 percent. Although many perceived the usefulness of the services to their business as “good,” this category received higher marks as “fair” and “poor” than the other attributes. **Figure 7-3** below provides a detailed breakdown of how respondents rated the DBE services they received.

**Figure 7-3: Evaluation of DBE Technical Assistance**

31. How would you rate the technical services you received from the CDOT DBE Program?							
	Excellent	Good	Fair	Poor	No Opinion	Rating Average	Response Count
Knowledge of staff	34.3% (24)	45.7% (32)	17.1% (12)	0.0% (0)	2.9% (2)	1.91	70
Availability of staff	30.0% (21)	45.7% (32)	14.3% (10)	7.1% (5)	2.9% (2)	2.07	70
Willingness of staff to help	42.9% (30)	37.1% (26)	10.0% (7)	7.1% (5)	2.9% (2)	1.90	70
Overall quality of assistance	32.4% (22)	38.2% (26)	17.6% (12)	10.3% (7)	1.5% (1)	2.10	68
Usefulness to your business	26.1% (18)	33.3% (23)	23.2% (16)	15.9% (11)	1.4% (1)	2.33	69
<i>answered question</i>							70
<i>skipped question</i>							653

**Types of DBE Services Requested**

The team also probed into the type of assistance that DBE business owners felt would be most helpful to their business in the future. Forty-two (42) individuals surveyed and 40 interviewed provided specific comments related to this question. It was evident from all the

comments that the following services, listed in order of frequency, were most important to DBE firms:

- **Networking** with prime contractors/consultants and project engineers.
- **Training** and practical assistance on a variety of topics.
- **Financial assistance** including lines of credit, bonding and help with cash flow to start a project and carry costs between payments.
- **More personalized attention** and one-on-one contact with CDOT small business staff, as well as CDOT engineers.
- **Increasing opportunities for DBEs** by having set-asides for specific work codes and preventing prime contractors from meeting an overall project goal with one or two specialties.
- **Project forecasts** to help DBE firms become more aware in advance of opportunities and to identify prime contractors for early teaming arrangements.

**Networking:** A majority of respondents commented that they would like more opportunities to meet with primes because they had a hard time forming relationships with prime contractors. They wanted help getting a contract but they understood that the way to do this was by building relationships with primes. Several mentioned that these introductions would be more valuable if they were by work code. Rather than having a general meet and greet session, it was suggested that CDOT help to align DBE firms by type of service (e.g., environmental) with prime contractors that are looking for those services. As one DBE business owner commented:

“We want to meet and greet primes with the help of a CDOT small business liaison officer. Who are the specific players? We need an introduction to a few from each area such as concrete, asphalt, sweeping, etc. DBE subs are not able to meet and market themselves without a vast number of other companies. We need a personal introduction.”

Also, there was a general feeling that the DBE Directory would be more valuable if it included a description of the business rather than just a listing of work codes so that primes would know more about the actual capabilities of DBE firms.

**Training:** The second most requested support service was comprehensive training that not only provides information but also instructs a DBE on how to put it into action. The most requested topics for training included:

- **Marketing and sales** – general marketing and selling to CDOT and primes, a “how to” list of marketing for subcontractors, finding business resources, relationship building, getting a foot in the door.
- **Financial** – general financial assistance including cash flow and bookkeeping.
- **Bonding** – financial preparation, how to obtain bonding, financial support (e.g., line of credit), putting together a package to get bonded.

- **Bidding** – bid process, estimating, preparation of proposals to CDOT, overhead costs, calculating wages paid, award awareness.
- **Contract negotiation** – subcontractor rights, negotiation with primes, rules on prompt payment.
- **Software** – specifically QuickBooks and other specialty software classes for contractors (e.g., GIS).
- **Safety** – hands-on training to help offset the cost increases in CDOT insurance and liability requirements.

There were also several comments on the business survey indicating that the training offered by CDOT is highly concentrated in the Denver metro area and does not adequately meet the needs of contractors in more rural areas. One White woman-owned DBE located in Bayfield, Colorado stated,

“I believe there could be a lot more training in the area of contract negotiations, non-payment by contractors to subcontractors, as well as other business training in rural areas that are not close to Denver. [There is] lots of training in Denver area.”

**Financial Assistance:** Several DBEs expressed the need for financial assistance to help with cash flow when there are delays in payment from the prime and they hire subcontractors requiring more immediate payment for services rendered. According to a September 27, 2006 news release from the United States Census Bureau, “almost half (49 percent) of the nation’s businesses are operated from home, and more than 6-in-10 owners used their own money to start the business.” The limited access to outside financing increases the dependence of these businesses on working lines of credit or advances for work that will be performed to generate needed operating capital.

Noted problems with timely payment, as outlined in the section titled “Prompt Payment,” are putting an undue burden on small business finances. DBEs have expressed the need for more assistance from CDOT in ensuring prompt payment from prime contractors, requiring faster release of retainage, assistance with cash flow up front to get a project started and providing more oversight and assistance with payment disputes.

**More Personalized Attention:** A few individuals mentioned the need for more one-on-one time with CDOT staff and decision-makers such as engineers and project managers. This would help them understand how to best utilize the program and gain the necessary contacts to obtain work with CDOT or prime contractors.

**More Opportunities for DBEs:** Additionally, a few individuals mentioned increasing the number of opportunities for DBE firms on projects. It was requested that CDOT should require DBE utilization on all bids and that there be set-asides for DBE specialty contractors. Two



people also mentioned that opportunities for DBE firms would be increased if CDOT used more prime contractors from within the state of Colorado.

**Project Forecasts:** Lastly, a few firms expressed the need for more knowledge about upcoming projects so they could be better positioned to bid or be part of a team. One respondent stated:

“We do a tremendous amount of networking through professional societies, with consultants and CDOT staff to find out where future opportunities are coming from. DBEs need better information on what/when CDOT projects are coming out so we can position ourselves on teams with Primes in advance of the RFP release - not after the fact. Where do we get the information the Primes seem to already have?”

One suggestion made by a DBE firm was to have CDOT publish an annual forecast of projects similar to what is done by the federal government. During an interview, this business owner said,

“CDOT could put all of next year’s projects on the web, a full year ahead of time. They don’t have to indicate the exact date, just say “fall 2009.” Give all the information to everybody, not just the large primes. For example, most of the primes know way in advance, even up to 2 years, and by the time a notice is published, it’s too late to get on a team. These primes are getting inside information from a few CDOT engineers that they are buddies with.”

#### **7.4.2 CDOT ESB Program**

All survey participants were also asked to comment on their general opinion of the CDOT ESB Program. Of the total 217 individuals who provided their opinion, 108 had participated in the ESB Program at some point during the Study period. Of those that had participated in the ESB Program, 57 were also DBE-certified. More in-depth opinions were provided by business owners during personal interviews. Of the 85 individuals personally interviewed, 30 firms were ESB-certified. Of those, 22 were also DBE-certified. The opinions of the firms that had participated in the ESB Program but were not DBE-certified deviated greatly from those that also had DBE certification status.

Almost half of the ESB-certified business owners that commented on the survey responded that it was good to excellent and said that the ESB Program helped their firm “get a foot in the door” with large prime contractors. It has opened up opportunities for small businesses that would not have been available to them otherwise. Although there was some confusion about the benefits of the Program to small business and primes, overall it was perceived as a positive initiative. Many of the positive comments included praise for the support provided by CDOT staff. Additionally, prime contractors that had worked with ESB subcontractors in the past said that the program was “fairly easy.”

However, survey responses and interview comments from ESB-only certified firms tended to have a more negative impression of the Program than firms that were also DBE certified. The most common complaint was that the ESB Program does not benefit White male-owned small businesses because DBE firms are also allowed to be certified as an ESB. Prime contractors are more apt to use a dual certified DBE/ESB firm because they get points toward contract evaluation and they can meet DBE goals. ESB firms without DBE status are therefore at a disadvantage and the incentive to use an ESB-only firm is diminished. One White male-owned engineering firm shared his opinion of the program and how dual certification negatively impacted his business:

“We participated in the CDOT ESB program for 3 years and it never benefited us in any way. No work was ever obtained due to our ESB certification. In our opinion - the ESB program should be treated the same as a DBE. ESB should be classified the same as a minority or women-owned business. The prime should be able to receive the same credit for an ESB as they would for a DBE (minority or women).”

Many ESB-only certified firms expressed that it is a greater disadvantage to be a small business than a DBE business for transportation projects because prime contractors have little incentive to use an ESB-only certified firm when there are no established ESB goals on projects. During an interview, a non-DBE ESB environmental firm said they received 8 to 10 emails per week from prime contractors saying they would use them for an upcoming bid but the requirement was being met by a DBE. The owner expressed this concern:

“The DBE/UDBE goals on CDOT and federally-aided local projects prompt large construction and engineering firms to meet DBE/UDBE goals with DBE firms in areas where we provide services, which effectively discriminates against ESB firms like us trying to get on teams. The usual response when we ask to get on teams is "we are going to fill that slot on the team with a DBE.”

Similarly, a non-DBE woman-owned firm that has ESB certification said that her firm is routinely passed over by prime contractors because the prime is looking to fulfill DBE requirements. In comments provided on the survey, she expressed her frustration:

“We are routinely passed by firms that we can team with for DBE status firms although they are not always as well qualified as we are or even as competitively priced per project. I do not offer this statement as whining nor is it an exaggeration. More than once I or my business partner have been told regretfully by a potential client or teaming firm that they would have chosen us if we had DBE status but that they have to comply with the quota regulations. As the years go by I increasingly feel the bias in the marketplace and watch the steady loss of market share to other firms of similar size, stature and nature although we are just as capable and just as deserving, and in some case more so.

If I were asked directly if I feel discriminated against by this system I would have to say yes absolutely. I appreciate the intent behind establishing the DBE status

to assist well-qualified women and minorities to have an equal opportunity in this highly competitive industry. I do not appreciate being shut out from market share as well as specific projects because my professional background is different than someone else's. I compete in the same field for the same work with the same concerns as every business owner. I find it sadly ironic that the very system that is supposed to create a level playing field for women and minorities is constructed in such a way as to make it more difficult for a woman-owned and operated company to compete. Something is amiss with this system.”

The following are additional comments from four separate White male-owned ESB firms that reiterated this common frustration:

“I see no point in having this program even though we are an ESB firm. I believe it is a waste of money for CDOT to have such a program. Being an ESB firm does not help us get work on CDOT or federally-aided local projects, never has and never will because DBE firms are also ESB firms and CDOT or federally-aided local projects never have an ESB goal.”

“The intent of [the] program is good but CDOT doesn't provide the same incentives to Prime Consultants in the project selection process to utilize subconsultants that are ESBs as it does for subconsultants that are DBEs. Therefore, Prime Consultants use DBEs instead of ESBs. As a result, we feel [the] ESB program is fundamentally crippled.”

“The prime has little or no incentive to use us - especially for on-call contracts, in which they use us to meet their quota at the proposal stage and then never give us any work. The program is good but the actual use of ESB firms is not enforced.”

In summary, the ESB Program has had a positive affect on a variety of small and minority-owned businesses. However, the different incentives and standards used for the ESB program versus the DBE Program has made it difficult for non-DBE small businesses to reap much benefit. The transportation community as a whole would like to see more support for all emerging small businesses through general small business set-asides, improved incentives for prime contractors, and equal evaluation of DBE and ESB firms in project selection based upon low bid.

#### **ESB Program Technical Assistance**

Of the 108 survey respondents that indicated they had participated in the CDOT Emerging Small Business (ESB) Program, 48 of those had utilized various technical services. Additional information was collected from 13 of the interviewed business owners that had utilized ESB Program services. The table below shows a breakdown of the types of ESB firms by race/ethnicity that either had or had not used ESB technical services.

As shown in **Figure 7-4** below, more than half of ESB firms responding had received general business consulting and training support. These were followed closely by the number of firms that had obtained support with relationship building. Similar to the DBE Program services,

bonding assistance had the lowest percentage of responses. The following chart provides a synopsis of the survey responses.

**Figure 7-4: ESB Technical Assistance**

36. Which type(s) of technical assistance did your firm receive through the CDOT ESB Program? Please select all that apply.			Response Percent	Response Count
General business consulting			54.3%	25
Sales & marketing consulting			21.7%	10
Training and seminars			54.3%	25
Estimating, bidding or proposal assistance			19.6%	9
Bonding assistance			8.7%	4
Relationship building with CDOT or primes			47.8%	22
Other (please specify) <input type="button" value="view"/>				1
answered question				46
skipped question				677

Almost 45 percent of the business owners interviewed said that the technical assistance they received helped them do business with CDOT and other agencies while 27 percent said that it had not. The other 27 percent declined to answer. Two of the ESB firms said that the Program helped them to “feel more professional” and it increased their “knowledge so they could keep current, grow and learn.”

Technical services were consistently rated as “excellent” across all attributes. By far, most ESB firms felt that the knowledge, availability and willingness of staff to help was “excellent” or “good.” As seen in **Figure 7-5** below, this same rating held true for the overall quality of the assistance and the usefulness to the business. There were only a very small percentage of individuals that felt the support they received was “poor.”

**Figure 7-5: Evaluation of ESB Technical Assistance**

37. How would you rate the technical services you received through the CDOT ESB Program?							
	Excellent	Good	Fair	Poor	No Opinion	Rating Average	Response Count
Knowledge of staff	40.4% (19)	38.3% (18)	8.5% (4)	0.0% (0)	12.8% (6)	2.06	47
Availability of staff	46.8% (22)	34.0% (16)	6.4% (3)	0.0% (0)	12.8% (6)	1.98	47
Willingness of staff to help	52.2% (24)	28.3% (13)	4.3% (2)	2.2% (1)	13.0% (6)	1.96	46
Overall quality of assistance	38.3% (18)	38.3% (18)	8.5% (4)	4.3% (2)	10.6% (5)	2.11	47
Usefulness to your business	37.0% (17)	32.6% (15)	13.0% (6)	8.7% (4)	8.7% (4)	2.20	46
answered question							47
skipped question							676

### **Types of Services Requested**

ESB business owners were also asked about the types of assistance that they felt would be most helpful to their business in the future. Thirty (30) individuals provided comments on the survey and 12 of those interviewed gave their opinion. The following is a list of the most requested services:

- Networking with prime contractors/consultants and CDOT engineers
- Training
- More program information and communication of benefits to primes and ESBs
- Mentoring by large prime contractors
- Small-business set-asides
- Bonding assistance

**Networking:** Similar to comments from DBE firms, several ESB firms commented that they would like more opportunities to meet with prime contractors/consultants that do business with CDOT. They were looking for help with relationship building and marketing to primes that may use their services. As one business owner commented, “More needs to be done to actually team ESBs with prime consultants.” This was reiterated in their need for general help with marketing and sales and obtaining contracts. The Mentor-Protégé Program has helped to facilitate this for some firms but others would like to have personal introductions.

Additionally, it was important that small business owners be given the opportunity to meet with CDOT project engineers. This was seen as a way to build trust and credibility with the end customer so that a small business could be looked at as a potential prime contractor and the team selection, when subcontracting, would be more powerful.

There was also a general opinion that prime contractors would be more willing to contact ESB firms if the ESB Directory was improved. Currently, a list of ESBs is available for download from the CDOT website and prime contractors receive a paper copy once per month from CDOT. The way the list is organized has prevented some prime contractors from identifying potential subcontractors for certain types of work. One prime contractor provided a written statement that described the problem and provided a suggestion for improvement:

“The list should be organized so that anyone can understand it. As it is, this document is coded for CDOT personnel. While it does list eligible contractors for CDOT’s ESB program, the assigned “Work Codes” are at the end of the document, leaving readers to scroll down each time we want to find out more about each small business. CDOT should create a directory (not a list) which will present ESB businesses alphabetically by category, not alphabetical by code. Primes subcontract out by the type of work done. Please list businesses in words, not codes. List the categories, by name, along with the business. Don’t

code it and put the codes at the end...this is an example of how to be business friendly.”

**Training:** There was also an overall desire for training and general business learning programs. The most requested topics were:

- Marketing and sales – how to do business with CDOT
- Proposals and estimating
- Estimating, bidding and proposals
- Software – Excel, Project Management, Scheduling and CPA Estimating
- Bonding requirements
- Insurance requirements and understanding limits

**Program Information:** ESB firms were very expressive about the need for more information about the Program and its benefits. A few of the respondents said that they did not know what type of assistance was available and what it meant for primes and small businesses. For those that were more aware, they suggested better communication of the Program benefits and better overall knowledge for prime consultants of ESB benefits including financial and point in winning work.

Below are several comments made by White male-owned ESB firms that demonstrate how the lack of program information has affected their business.

“Currently, it seems that most Contractors only know about the DBE program and not the ESB. It seems absent from most projects and overall contractor awareness. Nobody seems to know about it and nobody seems to feel it is a valid recognition opportunity for projects.”

“When I started talking to primes, they weren't well informed as to the advantages of hiring me as a sub. I was trying to educate them about the benefits of hiring me as a sub. It would be good if primes had more knowledge of the program.”

“Although I have been certified as an ESB, Prime Contractors I have contacted seem to have little knowledge of the program and the incentives provided by the CDOT.”

**Mentoring:** It was apparent that mentoring by large prime contractors that are in the same business area would be helpful to ESB firms. There were positive reviews for the Mentor-Protégé Program and an expressed desire to have more opportunities to be connected with large primes as mentors and teaming partners. Three of the firms interviewed said that they would like to participate in the Mentor-Protégé Program in the future and felt that having a large prime mentor would benefit their business. One current Mentor-Protégé participant said he would like more time in the program.

**Small Business Set-asides:** Additionally, many ESB firms suggested creating more equality in contracting with the DBE Program. One ESB firm said it would be helpful “if contracts and or jobs that are advertised listed ESB participation as an equal to minority/women participation,” while another went so far as to say, “Don't allow DBEs to be ESBs. Have ESB goals and not DBE goals on some projects.” Similar to what was uncovered in the survey and interviews, there seemed to be a general desire to have small business set-asides that would benefit both DBE and ESB firms. This would also address the expression of one individual who said to “put some teeth into the program.”

**Bonding Assistance:** For many ESB firms, obtaining adequate bonding was a concern. Almost half (47 percent) of ESB firms responding to the survey said that at some point during the past five years their firm had not bid on a CDOT project because they were unable to meet the bonding requirements. There was also some confusion about the type of assistance that CDOT provides to ESB firms regarding bonding. When asked about technical assistance received from the ESB program, one White male ESB business owner said,

“I've said over and over “can you help us with bonding?” Our bonding limit is the same as when we started the company. We started the company with \$9,000 and nothing, no computers, etc. and our bonding limit is the same today as it was then. We don't know where to go to get more bonding. Somebody said go ahead and get the job and then worry about the bonding afterward. After you have been denied through the bonding agency three times then the ESB will help you acquire bonding, I don't understand. That would be a huge problem to a contractor.”

## **7.5 Analysis of M/W/DBE Issues**

The anecdotal study uncovered several issues that were specific to minority and woman business owners in the transportation industry. Based upon the comments gathered through a variety of outreach methods, M/W/DBE business owners felt that prejudice and sexism still exists in the Colorado contracting community. These attitudes have created feelings of frustration among M/W/DBE owners and serve as barriers to DBE participation with CDOT in contracting and purchasing.

The survey and interviews also included several questions related to potential discriminatory practices toward small businesses by either CDOT or prime contractors. Business owners were provided with a series of situations and asked whether they had experienced any of them. Skip logic in the online survey automatically limited the pool of respondents to those firms that indicated prior experience with bid/proposal submissions or actual subcontract awards from CDOT during the study period of 2002 – 2007. Only this subset

of 166 survey respondents was asked to respond. If business owners indicated that they experienced any of the situations, they were contacted for a personal interview to provide more detail about the specific circumstances. **Table 7-31** on page 7-90 shows the results of these questions specified by race and gender. The varying totals for each of the questions are due to individuals electing to leave some of the categories blank.

Specific instances of discrimination were expressed related to elements of the bidding process and these were attributed to the perception that M/W/DBE firms would not be used by large prime contractors if DBE goals were not in place and in many cases the prime contractor would most likely self-perform the work. There is also a general feeling that favoritism exists among CDOT prime contractors to the detriment of M/W/DBE firms. These attitudes were most prevalent in the African American business community. A summary of the most prevalent issues is provided below.

#### **7.5.1 Racist and Sexist Attitudes Toward M/W/DBEs**

Both minority and women business owners alleged that they have encountered hostility, prejudice and sexism from some CDOT officials, majority business owners and suppliers. Often M/W/DBEs are stereotyped as incapable of providing quality goods and services. In personal interviews, roundtables and written testimony, several M/W/DBEs indicated they had negative experiences on job sites and during the bidding process. As seen in the comments below, the business owners described hostile experiences that made completing a project difficult.

***DBEs held to a higher standard because of ethnicity:*** A Black DBE consultant discussed discriminating treatment by prime contractor employees on a job site. He felt he was held to different standards than other contractors on the job because of his race. He said,

“When I first started my contract on a large a vertical project in early 2007, I had to deal with a little "select" group of the prime contractor's field personnel who struggled with the fact that I was awarded the contract. They would be very uncordial, full of attitude and even went as far as to accuse me of operating unsafe and not having the proper safety gear while on the construction site. One day I was called into the Safety Manager's office and drilled on how important it was to wear the required safety gear while onsite. It was later discovered that those employees were false with their accusations as certain managers would watch me from a distance to make sure I was wearing all the proper gear.

Just last spring I was highly complimented onsite by a project superintendent who expressed his appreciation for how I operated safely, look out for safety hazards, and always had on the proper safety gear. This vertical project has turned out to be a wonderful project for me and the accusers, well I don't see them anymore.

I decided to mention this incident to say that some of the very first problems DBE firms have on a project begin with bigoted or racist attitudes of the



prime's employees they have to interact with. These attitudes are something that most primes refuse to understand or address. When a DBE firm has to begin a project with this kind of pressure and stress, it becomes rather difficult to provide the prime contractor with good quality performance.”

***Racism still prevalent on the job site:*** Another instance of discrimination was discussed by a Hispanic business owner of a construction management firm that also provides design services. He shared that racist attitudes were more prevalent for contractors than consultants but he dealt with racism on a regular basis.

“The atmosphere on the construction side is different from the professional side; there are a lot of emotions and anger. That’s how people talk and they shouldn’t be talking like that in today’s society. People say, ‘Hurry up you Mexican, you stupid whatever,’ etc. I’m Puerto Rican, I’ve heard it too. I can tell when someone is fooling around or when someone’s being derogative. But I’ve definitely heard that; my whole career it’s been, ‘Come on, you beaner.’ I’ve heard it my whole life. The design side of things is more professional, but on the construction side, it’s guys like me smoothing out the waters so it doesn’t hit high levels. But it happens all the time. Unfortunately, I was just on a CDOT project and our superintendent said, ‘Get the f- off the bridge, you stupid \_\_\_’ and he was one of the best bridge builders I knew with 30 years’ experience, but he had to be fired over it. He was doing that for 30 years. He just crossed the line. It happens all the time.”

***Black-owned firms suffer from negative perceptions:*** During a roundtable discussion, a Black DBE business owner of another construction management firm talked about the negative perception of minorities in leadership roles. These perceptions are often overcome with good project performance but getting in the door is difficult because there is a hesitation by many White male-owned firms to work with a Black-owned firm.

“I have a couple companies that I partner with from time to time and I’m not big, but I’m planning on this project. Depending on what it is, and when we get there, and it’s not CDOT, this is just across the industry period, we get there and the project manager meets us. The first thing they do is they look across and talk to my partners, then they find out, ‘Well, no he’s the one who’s running the show.’ You see the attitudes, their face automatically changes. And the perception is I’m black and we can’t do a good job. You know what? I have a very good name. When we leave our project, they know we were there. I have respect when I first walk on a project but when first doing business with the company, they don’t respect me because I’m a black man. When we’re coming out to scope the job, that’s where you get the attitudes and that’s the job and we don’t allow it.”

***Facilitator:*** “Has that been restricted to one or two prime companies, or is this...?”

***Response:*** “It’s life as it is today.”

Another Black DBE business owner said that although all minority firms seem to have more difficulty than non-minorities, there seems to be more prejudice against Black-owned firms

in particular. When asked if his certification status had affected his ability to compete with other firms, he said,

“When they listed ethnicities, African American, women-owned...There’s a lot of contractors who have no intention of doing business with any African Americans. Like, ‘There’s no black man going to be on my job.’ And they don’t solicit you and you don’t get the work even if it’s right around the corner from your office. And CDOT says, ‘They don’t have to solicit you because they’ve solicited others.’ So you say, ‘They haven’t solicited me on the last 30 jobs, so I feel discriminated against.’ And they say, ‘Well, they’ve made their goals on the last 30 jobs so we have no issues with them.’ They’ll let those contractors use the same one guy over and over again and never use African Americans.

Some contractors choose which ethnicity they want to work with like they’re ordering from Subway. Firms that started up in the last 2-3 years do more work than we’ve done - women-owned, Hispanic-owned. African American firms are trouble. They make discrimination complaints.”

*Interviewer:* “Has your firm ever experienced discriminatory action from CDOT?”

“Remarks about my ethnic status. They said, ‘The only reason you’re on this job is because you’re a minority.’ There have been numerous comments. I experience different treatment on a daily basis of my personnel and myself. A lot of it is CDOT and the contractor both. They don’t like the program so they bond together to put a hurt to the DBE. That’s common.

You’ve got a big unknown you have to fight all the time. That’s a lot of work in addition to doing your job. And then they come up with extra work and extra stuff you have to do to be in compliance or they’re going to shut you down and back-charge your contract.

It’s CDOT as much as the contractor, CDOT engineers. When you complain to DBE personnel, they don’t do anything. They might make the call and ramp it up and you get treated meaner if you make a complaint to CDOT. Once in a while the contractor changes. Maybe one out of every 12 times, the engineer will change his behavior, but most of the time it gets worse. The staff under them turns against you and you’ve got a heck of a mess and it’s a rough job and you’re destined to lose money. It happens more with African Americans than other firms.”

The problem with discrimination against the African American community was discussed by another Black business owner that felt left out of contracting opportunities with CDOT because of his race. With the same level of education, experience and capabilities as his White male counterparts, he has been excluded from any work with CDOT. A specific example he shared was when his firm submitted bids as a subcontractor on the T-REX Project. He shared the following comments regarding this experience:

“Our most recent attempt to bid work was on the Colorado T-REX Project. We bid three projects (\$1.5 -- \$2.0 million range) and in each case we were the low and only bidder. We were not awarded any of the projects and were told our unit price for concrete was too high vs. the cost of the Prime Contractor's unit price in which that [*sic*] could buy at volume based on a \$3 billion dollar project. We

concluded this is racial prejudice and no one at CDOT offered any assistance. We offer an impeccable 33 year history in performing both vertical and horizontal work and have successfully completed over \$500 million in construction endeavors--so it's not capability it's race!

Our company has been in business for 33 years and we've done projects in both the horizontal and the construction sector and myself, I'm very frustrated because I studied architecture for four years and I studied construction management for two years on a graduate level and so I sat in classes with the same white males who are doing CDOT work and we took the same classes, have the same educational background and foundation and yet I'm treated differently. I have to come to work, and I have to go through a DBE process to get work and I think that's the core of it. I don't know if I'm doing anything wrong or if opportunity for doing work with CDOT is not available to our company and I don't know if that's because we're an African American company, but I don't know any resources within CDOT to help us get work."

**Hispanic-owned firms also suffer from negative perceptions:** Similarly, Hispanic business owners said that they experience racial discrimination that makes it more difficult than their White male counterparts to obtain work on CDOT projects. Initial impressions such as these often hinder minority firms from obtaining subcontracts and intimidate M/W/DBEs. A Hispanic business owner said that it would be easier to break down these barriers if there was an opportunity to meet with decision makers one-on-one and demonstrate capabilities. This business owner said,

"Sometimes we can talk to someone on the phone and everything is good. Then if they see us they have a tendency to make judgment and say, 'Those Mexicans don't know what they are talking about.' In a small venue we can "talk the language" and perhaps give them examples of the work that we have performed. Sometimes at these "meet the primes" events – the primes have "token minorities" to make us feel better that they are committed to minorities but they can't relate to us as professionals."

Another Hispanic business owner discussed how pre-conceived racist attitudes make it difficult to build relationships with White male-owned prime contractors. He said,

"Everybody has relationships that meet the comfort levels. Sometimes we are judged by our last names or by what we look like and not what we know. There is not a lot that anybody can do about that. Until we as DBE's make efforts to build the rapport with primes and establish the comfortable relationships that are needed – comfort with our ability and looking past looks and last names – we probably will only see minimal activity."

**Women-owned firms experience gender discrimination:** Several woman-owned firms also felt discrimination based upon their gender, especially with consultant contracts. A female business owner of an engineering firm provided a short written statement that included the following:

“In the past, as a WBE subcontractor, I was treated not as a professional, contributing part of the project team but as an evil necessity. A necessity who was taking bread from the prime’s table.”

A White male partner of a woman-owned DBE certified firm said that the business received more work once he started being the face of the company and meeting with contractors. He said that the “good ole boy” network still discriminates against women in transportation.

“Since I have taken over in a managing position, I know that our company has grown tremendously because contractors – you know it goes to the good ole boy, man on man instead of man with woman – there’s a lot of contractors that just don’t want to talk to a woman. Now that [partner] has let me manage it and talk to contractors, we’ve gotten so much more work than we had 10 years ago. I’m sorry but guys tend to scratch themselves, burp, tell bad jokes and they won’t do that with a woman.”

A woman-owned DBE landscape construction firm said that it takes relationships with prime contractors to receive CDOT contracts but it is more difficult for woman in construction trades to build those relationships. She said,

“Personally, this is a man’s world, and when you talk to Bob at the construction company, sometimes they just say, “Yeah, yeah,” and you’re talking to yourself; you’re lucky to get a response back, and you have to email again and keep on them. There’s more fishing you have to do, being a WBE. “

These impressions are not just limited to minority and women. A White male owner of an ESB certified Architecture/Engineering firm said that he had witnessed race/gender discrimination on several transportation projects. When asked during an interview if he was aware of any informal networking that gives advantages to firms selected for CDOT projects he said,

“I believe there are prejudice and discrimination. I have seen it on construction sites – prejudiced attitudes towards woman-owned firms and minority-owned firms. Women are treated differently than men. I have no issues with DBE program as a whole. I believe that without the DBE program it would be hard for women and minority firms to get work.”

### **7.5.2 Fear of Retaliation**

DBE Firms that did complain about unfair treatment usually received no relief or they ultimately suffered if they complained, and therefore, they learned not to “rock the boat.” In fact, 47 percent of the M/W/DBE firms that were interviewed said they feared retaliation and believed they would be “black listed” if they filed a complaint with CDOT.

A woman-owned DBE business said that retaliation is not just a fear but a reality. She discussed her experience after filing two complaints with CDOT regarding unfair treatment in project selection:

“I had at least three contractors from around the area tell me that even though they really would prefer to use us as a company, it was much easier to use this other company because of the problems that CDOT would always give us, which in turn would make a lot of problems for them.”

An Asian business owner shared a similar experience after filing a complaint with CDOT and discussed the repercussion it had on the firm:

“I was a sub on a project where the prime had contractual issues with CDOT and my invoice wasn’t paid for a year. I said I’d call the DBE office and the prime got excited about it. I haven’t teamed with them since, and they’re a major prime. I suppose I feel that there would be some retaliation. Our relationship has remained professional, but they haven’t put me on a team since. We still have a good relationship, but they’ll never team with me again. I haven’t talked to them explicitly about it, and I don’t know if I’ll get an honest answer.”

A Black male business owner also shared his experience and said that filing a Title VI complaint against CDOT labeled him as a “whistle blower” and essentially put him out of business.

“It’s collusion with the department and the contractors and the favored DBEs. I lost favor in trying to stand up for DBEs and the DBE program, and now they have terrible disdain for me. They will not deal with me and I’ll never be able to work with CDOT again. That’s discrimination at the highest level. I’ve made my complaints and they were kicked back.

Their actions caused me to lose 90% of my business because of their unwillingness to support me. I lost both public and private sector business, because it’s out there now – if you work with this guy, he’ll get you in trouble. I’m the convicted whistle-blower and CDOT could care less.

I had to get into doing different things because I can’t do the traffic business since my complaints. The phone just doesn’t ring much anymore. And we were doing a lot of business before.”

Another woman-owned DBE firm discussed how filing a claim with CDOT and a lawsuit against a prime contractor essentially “disqualified” her firm from being included in bids. She said,

“My company had a claim for non payment filed with CDOT and subsequent law suit in district court against a Prime Contractor. Subsequently I bid another CDOT job and submitted my price quote to this same Prime Contractor as well as all the other Prime Contractors. I was the low bidder and all of the Prime Contractors used my quote except the Prime Contractor which I had filed a claim against who was the low bidder and now could not meet the DBE goal. Yet he was awarded the contract. He claimed we were in dispute and therefore should not work together. The office of DBE was involved in this decision and declined my grievance. The Prime was awarded the project and before he performed he sold his company. This occurred over 3 years ago and I still have a CDOT Claim and law suit filed in district court against a phantom contractor and a dissolved corporation. To me this is real disparity!”

These incidents mirror the overwhelming opinion of all business owners, regardless of race/ethnicity/gender, of the perception that complaining to CDOT labels the firm as a troublemaker and they would not be able to get work from any government agency or prime contractor in the future. Many have seen deterioration in relationships and some have even been taken off a job. In the words of a Native American business owner,

“You might be perceived as a complainer and develop an undesirable reputation. It's hard enough to get a reputation – you don't want it to be a bad one.”

Based upon the comments from a variety of M/W/DBE business owners, both minority and women business owners feel that prejudice and sexism still exists in the Colorado contracting community. These attitudes create feelings of frustration among M/W/DBE owners and serve as barriers to DBE participation with CDOT in contracting and purchasing. In personal interviews, several DBEs indicated they had negative experiences on job sites and are held to higher standards than their white male counterparts. Racist and sexist attitudes were more often encountered by Blacks, Hispanics and women. The fear of retaliation and the resulting loss of work usually prevents M/W/DBEs from formally discussing these situations or filing official complaints with CDOT.

### **7.5.3 Favoritism by Prime Contractors and CDOT**

There was a general belief that favoritism and preferred contractor lists are being used to exclude minorities and woman from transportation contracts. On the survey and during the personal interviews, business owners were asked whether CDOT and prime contractors showed favoritism to some firms on projects.

As noted in **Table 7-14** below, the majority of minority business owners and almost 40 percent of woman-owned firms believed that prime contractors showed favoritism to some firms and, in most cases, this benefited non-DBE firms. As one Asian female business owner said, “My sense is there is [favoritism]; that they have a good idea of whom they want, and more often than not, it's a non-DBE.”

Discriminatory behavior by prime contractors on CDOT projects makes CDOT a passive participant to an environment of discrimination. Although the overall percentage of all business owners that felt CDOT maintained a preferred list of vendors was lower, more than one-third of the Black, Hispanic and woman-owned firms that responded felt that CDOT showed favoritism to some firms which excluded them from obtaining contracts.

**Table 7-14  
Perception of Favoritism**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Prime contractor had a preferred list of vendors to the exclusion of your company							
Yes	44.4% (4)	58.3% (7)	57.1% (12)	100.0% (4)	39.7% (23)	29.6% (16)	41.8% (66)
No	22.2% (2)	25.0% (3)	33.3% (7)	0.0% (0)	44.8% (26)	57.4% (31)	43.7% (69)
N/A	33.3% (3)	16.7% (2)	9.5% (2)	0.0% (0)	15.5% (9)	13.0% (7)	14.6% (23)
<b>total</b>	9	12	21	4	58	54	158
CDOT had a preferred list of vendors to the exclusion of your company							
Yes	25.0% (3)	44.4% (20)	37.5% (18)	25.0% (4)	30.1% (31)	27.0% (27)	31.8% (108)
No	58.3% (7)	35.6% (16)	35.4% (17)	25.0% (4)	35.9% (37)	51.0% (51)	40.7% (132)
N/A	16.7% (2)	20.0% (9)	27.1% (13)	50.0% (8)	34.0% (35)	22.0% (22)	27.5% (89)
<b>total</b>	12	45	48	16	103	100	324

In follow-up interviews, several M/W/DBE firms said they felt CDOT showed favoritism toward certain M/W/DBEs. One specific example came from a Black business owner who said he thought CDOT showed favoritism with;

“the selection of various contractors that team with CDOT; the selection of CDOT’s BOWD participants, which was not publicly advertised, it was just a selection of those within the circle. And there was no competitive process. CDOT simply selected the people they have associations with. CDOT tends to select the people it’s comfortable with, and that’s where the “good ole boy” system comes in. The selection always goes to those who are connected, which I guess is how the game is played. Those who have the relationship get the work.”

While many of the firms indicated that favoritism was based upon established working relationships, the following discussion shows examples of the notion that a “good ole boy” network plays a role in the disparate treatment by prime contractors toward M/W/DBE subcontractors. More than 40 percent of the firms interviewed said that they were aware of informal networking by prime contractors that gives advantages to firms selected for CDOT

contracts. The fact that prime contractors have a preferred network of subcontractors that excludes some M/W/DBEs makes it very difficult for minority and women contractors to obtain work and gain the experience necessary to show relevant past performance.

A Hispanic trucking firm shared the firm's struggles with trying to work with prime contractors that already had preferred vendors:

"It was so time consuming and difficult to get the DBE, that once we were awarded it we went out and started bidding like crazy. Come to find out that none of our efforts were going to be rewarded due to the fact that Prime contractors already know who they want to do the work. We were being brought in to do the tough, hard work in the beginning, only to get kicked off the job so the "real" company could come in to finish the job without having to stress their equipment. We need work and trying to find a prime that will give you a chance is hopeless."

A Black male business owner and consultant that has been working in construction or consulting for construction companies for over 36 years in Colorado said that it's difficult to get CDOT and prime contractors to change their way of doing business, even when there are federally-mandated goals to use DBE firms. In a written statement, he said,

"There is that "good ole boys" mentality in construction and CDOT that persists even with state and federal regulations. That is to say, 'We've always done it this way. Why change.' The DBE (minority) contractor regulations put a crimp into the prime contractor's style of doing business. They have always been of the opinion that as long as we get the job done for you, what does it matter who I use. The prime contractors send out invitations to bid to their "preferred" subs at the time they decide to bid on a project, the DBE contractors do not get invitations to bid until two (2) days prior to the bid due date, not giving them enough time to produce a good bid. Most primes fight the system of having to use DBEs because that's not the way they did business in the past and resist changing. They don't have to change just give the DBEs an opportunity."

A Hispanic business owner said that by having DBE goals on CDOT contracts, prime contractors are encouraged to consider firms outside of their preferred network. This has helped challenge the traditional favoritism that exists in CDOT contracting. Because of this, he also felt that if DBE goals were removed, prime contractors would revert to using only those firms that they were comfortable with, which in many cases were White male-owned firms. He said that without DBE goals,

"There is just no incentive for them to [use DBE firms]. They would then want to turn to enterprises that they felt, whether it is a right or wrong perception, would be able to get the work done at the price in the relationship that they want. Now that could be that they happen to be the right size or the right color. There's a variety of back-door reasons why people use companies. I think having goals set-aside for companies that qualify themselves as being absolutely capable of doing the work but also need the assistance to level the playing field has made a really big difference."



This is not just the opinion of DBE firms. One White male-owned prime contractor said that when he was putting together a team for a project on the Western Slope, he did not include minority firms because there were no goals and therefore he didn't need to. He stated,

"I've gone after projects on the Western Slope where they're not as sophisticated as Eastern Slope. I just put together a team that I think will win and they didn't put any minority goals in, and gosh, I didn't have any minorities. And then they figure out it's Federal funds, and they have to do it, so we have to reteam. I wasn't doing it other than just to put together the best team."

In summary, the majority of DBEs believed that prime contractors show favoritism to some firms. There is a perception that a "good ole boy" network still exists in the transportation contracting environment in Colorado. While many of the firms indicated that the favoritism was based upon established working relationships, the general feeling was that this favoritism results in discriminatory treatment by prime contractors toward M/W/DBE subcontractors. DBE goals have helped promote more usage of minority- and woman-owned firms and have encouraged prime contractors to work with new companies outside of their preferred subcontractor network.

#### **7.5.4 Problems with Good Faith Efforts**

Under the existing CDOT bidding procedures, prime contractors, who are almost exclusively white, are required to contact DBEs in an attempt to meet the DBE subcontracting goals established for the contracts. Prime contractors fax invitations to bid to DBE subcontractors listed by work code requesting either a bid or an indication that the DBE is not interested in submitting a bid. It was the perception of both the DBEs and the prime contractors that during the study period of 2003 – 2007, the implementation of this practice was often unfair in the evaluation and award of CDOT contracts.

DBE subcontractors consistently complained that the prime contractors were attempting only to create the appearance of making required good faith efforts and were not legitimately interested in entering into subcontracting agreements with DBEs. Many DBE contractors said that that prime contractors did not provide adequate time to respond to request for quotes and the faxes they receive requesting bids are often times for services they do not provide. The process of implementing the good faith effort, as mandated by CDOT, was also perceived as promoting unfair bid shopping by prime contractors. Although DBEs were being contacted more frequently by primes, the amount of resulting work often did not justify the effort to bid. These practices, used by prime contractors, have created barriers to contracting by DBE-certified subcontractors.

**Primes give inadequate time to respond:** On the survey and shown in **Table 7-15** below, 45 percent of all M/W/DBE firms indicated that they were given limited time to prepare a bid package or quote. African American firms experienced this problem with the most frequency (59%) while white male-owned firms experienced it the least (32%). This appeared to be a barrier to contracting that often occurred with DBE firms as a result of the good faith effort process.

**Table 7-15**  
**Limited Time to Prepare Bid or Quote**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Limited time to prepare bid package or quote							
Yes	33.3% (4)	58.7% (27)	46.8% (22)	50.0% (8)	38.9% (42)	32.4% (33)	41.1% (136)
No	58.3% (7)	30.4% (14)	38.3% (18)	12.5% (2)	38.0% (41)	49.0% (50)	39.9% (132)
N/A	8.3% (1)	10.9% (5)	14.9% (7)	37.5% (6)	23.1% (25)	18.6% (19)	19.0% (63)
<i>total</i>	12	46	47	16	108	102	331

In follow-up interviews, many DBEs complained that the faxes sent by prime contractors requesting a bid did not provide DBEs with adequate time to respond. A Hispanic DBE contractor that responded “yes” to the survey question shown in **Table 7-15** said that the General Contractor (GC) only gives 2-3 days to prepare a quote or proposal so that they can do without a minority contractor. He expressed concern the primes purposefully limit the amount of time a DBE has to respond, expecting “no response” so that the prime contractor can fulfill the good faith effort requirement on a bid and not have to use a DBE subcontractor.

A Black-owned contractor at a roundtable shared his specific experience regarding the limited amount of time provided by a prime contractor to submit a bid. He stated,

“I get a bid request at 4:30 pm yesterday and it’s supposed to bid today at 4 pm. I got three hundred pages coming on my fax machine and (company name) is sending them to me and saying, “get these to me first thing tomorrow morning and I will accept your bid.” So I’m supposed to stay up all night...put the puzzle together with all the pages to create a picture so that I can give you numbers and then turn it in tomorrow and forgo whatever I had scheduled for tomorrow just so I have the opportunity to bid on a project, which most likely I won’t get anyway because I can’t get the same numbers as somebody else.”

A Hispanic business owner said that 8 out of 10 primes call only a day or two ahead. This practice is discriminatory against DBE firms because they cannot successfully compete against “preferred” subcontractors that are given 2 to 3 times more time to provide a bid. He stated,

“They call you the day before the bid is due and they don’t give ample time. They say they talked to me and I’m not bidding and that is their good faith effort. A good, sincere prime gives you 6-10 days or so to respond.”

The above scenario results in DBEs being forced to bid against each other within a very short time frame without adequate information. Majority contractors are generally given ample time and detailed specifications to prepare their bids. DBEs, on the other hand, are given limited time and information to render significant bids. These practices often result in DBEs performing contracts at a loss or with marginal profits. This is magnified by prime contractors not giving subcontractors enough information to accurately provide a bid, essentially precluding those subcontractors from being selected for the bid.

**Primes unwilling to provide necessary information:** On the survey and shown in **Table 7-16** below, 67 percent of Black-owned firms and 52 percent of Hispanic-owned firms had experienced a prime contractor that was unwilling to provide necessary information to bid on project, as compared to only 11 percent of White male-owned firms.

**Table 7-16**  
**Primes willingness to provide adequate bid information**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Prime contractor unwilling to provide necessary information to bid on project							
Yes	0.0% (0)	66.7% (8)	52.4% (11)	25.0% (1)	29.8% (17)	11.3% (6)	27.6% (43)
No	88.9% (8)	25.0% (3)	42.9% (9)	75.0% (3)	56.1% (32)	75.5% (40)	60.9% (95)
N/A	11.1% (1)	8.3% (1)	4.8% (1)	0.0% (0)	14.0% (8)	13.2% (7)	11.5% (18)
<b>total</b>	9	12	21	4	57	53	156

One Asian DBE consultant that did not complete the survey but participated in a personal interview shared the following,

“We receive many last-minute bid solicitations for minor amounts of work from primes we have, otherwise, never communicated with and for projects we know nothing about. There are no plans, quantities (other than "1 - Lump Sum"), scope

or any other information about the project, other than the project number and location. The primes know, and we know, that it is impossible to get up-to-speed on the project quickly enough and economically enough to provide a realistic price and scope. They just want to show that they met their minority solicitation requirements.”

When asked to expand on this, he provided a summary of his feelings regarding the barriers that DBE firms have when trying to work with prime contractors to obtain CDOT contracts. He said,

“Prime contractors and consultants pick their subcontractor and subconsultant teams based on relationships. DBE subs have a difficult time developing relationships with non-DBE primes. DBEs are seen as a hindrance and as bothersome. We receive many last-minute faxed solicitations for survey bids but we do not have the resources to research all projects and devote time and \$\$ to a last minute low bid response, especially when we know (1) the primes have already put their preferred teams together and are only soliciting bids to us because they have to and (2) the solicitation comes from a prime who doesn't actually have the job but is also bidding.

We tried this at first but we ended up spending a lot of money chasing projects, not getting anything, not developing relationships and realized that we probably wouldn't make money even if we ended up with any of these jobs, because we would be thought of as a one-time strictly low-bid DBE "necessary evil" sub.”

**Primes request bids from M/W/DBEs for unrelated work:** M/W/DBEs also complained that they received faxes requesting bids for services that they did not provide. Although not as large of a problem as other areas of the good faith effort, it is worth noting because, as shown in **Table 7-17**, more than 37 percent of M/W/DBE firms responding to the survey had received a request for quote (RFQ) for work unrelated to their business. This was not a situation that occurred frequently for white male-owned firms. In fact, almost 72 percent of white male-owned firms said that it was not a problem.

**Table 7-17**  
**Prime requests for RFQs in unrelated work**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Received a Request for Quote from a prime for work unrelated to what your firm does							
Yes	33.3% (3)	33.3% (4)	45.0% (9)	75.0% (3)	33.3% (19)	17.0% (9)	30.3% (47)
No	44.4% (4)	66.7% (8)	55.0% (11)	25.0% (1)	54.4% (31)	71.7% (38)	60.0% (93)
N/A	22.2% (2)	0.0% (0)	0.0% (0)	0.0% (0)	12.3% (7)	11.3% (6)	9.7% (15)
<b>total</b>	9	12	20	4	57	53	155

This problem was reiterated in the interviews. When discussing whether prime contractors sent bid requests for work unrelated to the firm’s line of work, a Black DBE owner of an engineering firm said,

“That happens all the time. They send a notice and call but they’re not intending to use us on the project...They call us about something that has nothing to do with what we do just to say they did it, to say they went through that good faith effort.”

Another Black DBE owner of a concrete firm said that they often receive RFQ’s 2-3 days before the bid due date and in many cases they are for services not provided by their firm. He said,

“It’s my impression that we’re part of a general fax blast and it’s just some requirement of doing what they have to do because typically there isn’t anything on there that we can do. Occasionally, when we see something and call about something that we do or what we’d like to do it, already belongs to a much larger company and if we want in we’d have to be willing to work for them for a lot less than it’s worth. So, it’s like junk mail.”

**Primes actively seek “no bid” responses:** In another instance, a Black DBE traffic control owner in Durango said that prime contractors often seek “no bid” responses to show a good faith effort in order to meet bid requirements without actually having to use DBE firms for project work. He said he is routinely contacted by prime contractors outside of his primary geographic work area because they are looking for “no bid” responses from DBEs.

“If there’s a job in Colorado Springs, I get a lot of phone calls. If there’s a job in Durango, no phone calls. Up there they’ll call me for a job...because I’m not willing to go to the Springs and they can tell CDOT, ‘See, we called.’ We get a

hundred calls from people like that. The only thing they want to do is fill that form out so they can give it to CDOT and put it in the file. They're looking for the "will not bids."

A Hispanic-owned trucking company that received DBE certification in 2008 said that although they are getting contacted to bid by many more prime contractors in the past, they have yet to receive a subcontract for CDOT work. The business owner commented on the survey,

"I'm finding out that a lot of contractors that solicit you to bid are just trying to meet the DBE goal and already know that they are not going to use you or said that they didn't need the service we provide. We submitted a lot of bids this year but I am getting the feeling that they just need to get the DBE goal or good faith sheet back and have no intentions of using our company."

Similarly, another Hispanic DBE firm shared an experience where a prime contractor tried to circumvent the good faith effort by showing "no bid" responses even though he had submitted a bid. He shared the following incident during an interview:

"We had one case where CDOT called [prime contractor], because [prime] got a project and it was south of here. And then [prime] told CDOT that they hadn't got any response from DBE's. And it so happened that I bid that job. I had sent them a proposal. And everything was recorded on the fax machine, but they denied it. But then we went to the fax machine and they had gotten it the day before, so on and so forth. And then it turns out after we proved that we had provided a bid, and we showed them (because CDOT was after them) they did have a bid from us and they had at least one from us. Well, it turns out that then they went to the excuse that the portion of the work that we had bid was a package of another non-DBE contractor and he went ahead and did everything anyway. So we had curb and gutter and flatwork, and they went ahead and gave it to a contractor that was doing concrete paving, which is a huge portion of the job, mostly it was concrete paving. And they went ahead and gave him the curb and gutter and flatwork since he was already doing the other stuff. That was the last excuse. But the main excuse was that they never received a bid from a DBE."

A woman-owned contractor also shared an experience in a written statement about a prime contractor that was forthright about not expecting a bid but sent an RFQ to her firm in order to count the outreach toward their good faith effort. She wrote,

"We were approached by a heavy civil GC no less than THREE times to provide 25,000 tons of Roadbase in SW Colorado on a CDOT job. I was thrilled because we were looking for an opportunity such as this. I immediately called the GC and said I would be happy to provide the material onsite, as I knew, from a previous career, that they had borrow pits adjacent to the job site. The senior estimator sounded confused: "Oh," he said, " I didn't *really* mean for you to provide a quote. I was just sending out the good faith effort because I had to." Stunning. When I expressed my reaction and asked him why he had bothered to generate the paperwork, he simply replied that he was following the requirements of the good faith effort, and would remove (us) from the bidder list."

**Good faith effort evaluation is misunderstood:** In several cases, both M/W/DBE and large prime contractors said that they did not believe there are clear guidelines for how the good faith effort is judged by CDOT evaluators. This was often seen as a problem across the different CDOT regions. A Black-owned DBE contractor shared an instance of teaming with another DBE firm to bid on a project in Fort Morgan. The contract was awarded to a non-DBE firm that had a lower bid but did not meet the stated DBE goal although they had showed a “good faith effort.” The DBE owner said,

“A good faith effort is something that somebody in Tallahassee, Colorado uses where there are no black people. A good faith effort in the city, within 50 miles of the city is ridiculous, it’s insulting. If we bid on that job, how can [company name] get the contract with a good faith effort? They had two bids and we were told that we were too high. That’s when I turned my fax machine off and said I don’t need this.”

A White male-owned prime contractor from southeastern Colorado said that they have had problems with different CDOT procurement officials evaluating the good faith effort differently. The following is an excerpt from his statement at a public hearing:

“As I go through good-faith efforts and all these programs, it’s very vague to me what the guidelines are, other than what’s required prior to bid. And every good-faith effort that I’ve gone through, I’ve had a different representative from the State review our bids. It’s always a different person. And it’s always, in my opinion, been looked at different. And it’s my opinion that in the office down there, that maybe there are -- it seems like there’s no set guidelines. Everybody kind of has their own opinion as to what’s correct and what’s not. And that’s my concern. I think it should be a black and white line as to, yes, you made good faith; no, you did not. Also, in one of my reviews, I was very disappointed. I did end up getting the job. I went through an appeals process. It was taken away at first, and I went through an appeals process and was re-awarded the project. But the officer that reviewed our good-faith effort didn’t have an understanding of the bid process.”

These instances reveal that there is a lack of understanding by both primes and M/W/DBE subs as to the process followed by CDOT and there is a perception that the rules are implemented differently in the various regions across the state.

**Primes experience additional costs to meet GFEs:** Many of the White male-owned prime contractors also expressed frustration regarding the requirements for good faith efforts. In many cases, general contractors discussed the increased costs and resources associated with attempting to meet the good faith effort requirements. A White male-owned prime contractor with 40 employees said,

“The good faith effort is too onerous. As a small contractor, it costs me a great deal to bid CDOT work. I have to dedicate a day or two of time for half of my office staff to make sure we solicit every single subcontractor in a particular work

category. So, if I'm bidding a job in Julesburg, I may need to solicit a subcontractor in Cortez even though I know there is no way in the world that a subcontractor is going to be interested or competitive. In my view, your good faith system is broken."

Many indicated that the process should be revised by CDOT to remove some of the burden from the prime contractors and place it on the DBE subcontractors. One prime contractor shared the following:

"It seems all of the burden to get DBE participation is placed on the prime contractor. It is time consuming and contentious to call every DBE for every bid to CDOT with goals, even when the DBE tells you they are not interested in work outside of a particular geographical area. It is also a risk to the prime contractor when a DBE says they can bond a job at bid time and won't after the bid. The pool for qualified DBEs for CDOT work is very shallow and those who are qualified know it. Meeting goals is a challenge and the tough construction market makes it worse as we work in a low bid environment. Knowing if your bid is not low, you will not get work, and therefore you cannot provide any monetary support in your bids to mitigate any risks associated with unqualified subcontractors."

**Primes do not receive adequate responses from DBEs:** Several prime contractors said that even though they use the good faith effort to identify DBEs willing to bid, in most cases they do not receive a response. Of the responses they do receive, the quotes are not professional or competitive which creates a stereotype that is applied to all DBE firms. A White male-owned prime contractor stated,

"Although we solicit 100% of the DBE firms who are listed under the categories we're subcontracting; call them to ask if they need assistance; follow up the day of bid to see if they're sending a quote --- we only get a very minor response. One out of every 20 DBE firms we contact will actually send us a quote. Of quotes received by DBE firms, many of them do not realize they are bidding in a competitive environment. You would be surprised at the way quotes come in: Handwritten, missing information (quantities per bid documents, unit prices), or just unrealistically too high for a low bidder environment. DBEs have to remember that primes are chosen by the lowest bid. Therefore, subs are chosen by the lowest bidder as well. If a DBE comes in "way above the market rate" they are more than likely NOT going to be picked. We encourage DBEs to do market research and to find out what their competitors are doing."

**DBE Directory is inaccurate:** This general contractor also discussed problems with meeting the good faith effort. Particularly, this prime had encountered inaccurate information in the DBE directory, in that the DBEs did not do the type of work listed. The following example was provided during a roundtable discussion and in a follow-up written statement:

"[Our company] and other primes rely on CDOT's web site for good faith effort(s) and contacting small companies who are new to the system so we can meet them / get to know what they are interested in doing. If the online list does not reflect the real market for small business enterprises (DBE / WMBE / ESB), how



do you expect them to get any business? And how are primes supposed to document a "good faith effort" when your information is all wrong? Small business information is unreliable because many "work codes" assigned to them are wrong because they are input into a database by a city of Denver employee who is "not responsible for CDOT's data," I've been told.

I have talked to many owners in the DBE database to see if (in fact) they do the work codes they are listed under and 9 times out of 10 the list is wrong. These DBEs and many others are fed up with not being listed correctly and everyone is questioning CDOT's practices. What would you think, if you were a certified DBE small business owner wanting to be solicited for the work you have the manpower and equipment for --- and the agency who certified you doesn't list you under the work code you perform?

Problem: Primes use this database to document our compliance to reaching DBE goals; yet if the information is incorrect, we are not reaching the correct markets / small business owners. When primes use DBE lists in good faith, to solicit and to get to know small businesses as we should, we expect to be able to contact businesses who do what they specialize in."

***Inaccurate information and process negatively impacts DBEs:*** Inaccurate data about DBE firms, especially in work codes, was another complaint heard from many DBE firms as well as prime contractors. Although the process for CDOT DBE certification is "unified" with the City and County of Denver, there is not much cooperation between the agencies to ensure that work codes are correct. This often results in missed opportunities for DBE firms and wasted time and effort by both prime contractors and DBE firms that are participating in a good faith effort based upon data that is incorrect. A White woman-owned flagging business that had been doing business with CDOT for seven years shared the following during an interview:

"We are certified through the City and County of Denver in 2003. In 2006 to 2009 was our next certification, which is active, but somehow there were a couple of things left off. When I discovered it I wrote a letter, I called, actually, the name on the database that takes care of that web and they said "No, you're certified through the City and County of Denver. You've got to talk to them." So I talked to them and nothing happened. I wrote a letter to Tamela Lee who's the head, I think she still is, with copies to the people at CDOT that are responsible for this list and that was back in, like March or April and I looked at it a couple days ago and it's still inaccurate so I will be writing yet another letter. The problem is we will get calls from contractors saying "Well I don't know if we can use you because you don't have a flagging code". And I'm like 'I assure you, and I have the code. Somehow it got dropped off somebody's data entry error and it never got fixed.' In this case it was a problem through the City and County of Denver and CDOT is like 'La la la la, I have my blinders on and unless somebody else gives it to me I'm not going to help.'"

***DBE goals set too high in rural areas:*** Another complaint that was consistently heard from prime contractors regarding the good faith process was that DBE goals were being set too

high by CDOT in rural areas outside of Denver metro where there was less DBE availability. One White male-owned prime contractor shared the following,

“Our company has experienced the following: DBE contract goals in outlying counties are set too high. Many of the DBE firms that we contact for bidding in outlying counties do not want to travel to work. As a result it is very difficult to receive quotes let alone meet project goals.”

Another White male-owned construction firm from southeast Colorado said that as a prime he consistently is challenged to meet DBE goals in an area where there is not enough DBE subcontractors to do the work. He also complained that CDOT does not seem to have set guidelines for how they evaluate the good faith effort. At a public hearing he shared the following:

“As a prime contractor, we go through the steps, we advertise, and do as we need. And what we have found is that, predominantly, on these eastern plains out here, we'll have goals that are set 10 to 14 percent. And I think history would show, if you look back on that, that it's very, very difficult to obtain those goals as a general contractor. It's our opinion that a lot of the DBE firms maybe don't want to travel or work out of town. And it's not just DBE firms. We actually prefer to work eastern plains. We fit in well out there. We know the engineers. And we follow a lot of asphalt companies and do subcontract-type work. We bid that market out there as subcontractor and prime. But we've always had problems meeting DBE goals. I feel those goals are set too high out there. A lot of times they're just not achievable.”

***DBEs tie up bids preventing fair competition:*** Another prime contractor said that because the goals were set too high in work areas with less DBE firms, it was difficult to meet goals. He also mentioned that the few DBEs in outlying areas tie up bids, meaning that they require the prime contractor to use their entire bid for all work codes they are bidding or not use their bid at all. Those DBE firms make it difficult for other small businesses to compete because they know if there is a DBE goal on a project in an area with less DBE availability, they will be able to use their certification as leverage on a bid. He said,

“The system is also leveraged by certain DBEs by tying work packages where they know they have a local advantage. There is a UDB that wheels a lot of power in a certain geographical area and they do a lot of different types of work. So, they're boxing out the others. The goals on some projects also seem exceptionally high, this is the case when limited work items are available.”

In summary, there is a perception that exists among some DBEs that prime contractors are finding ways to circumvent the good faith effort requirements under CDOT's contracting programs to the detriment of DBEs. In general, DBE firms feel that non-minority general contractors request their bid only to give the appearance of meeting the good faith effort requirement. Several DBE owners indicated that prime contractors solicit bids with no intention of utilizing the DBE. The owners reported that it is common for prime contractors to request bids

from businesses that they know do not work in the requested area or businesses that do not have the capacity to complete the job requested so they can fulfill good faith effort requirements with “will not bids” from DBEs.

On the other hand, prime contractors said that the process of implementing the good faith effort, as mandated by CDOT, is onerous and forces them to choose between offering the lowest bid to CDOT and using a higher quote from a DBE firm. Because the DBE directory is not accurate and many DBEs either do not respond or “tie up” bids that prevents the prime contractor from using lower quotes for some services, primes are hamstrung by the process. Additionally, prime contractors believe that DBE goals are often set as too high in some rural areas of Colorado which makes the good faith effort futile and a waste of time and money.

#### **7.5.4 Prime Contractors Self-Perform DBE Work**

During follow up interviews, several DBEs said that they were included in a bid as a subcontractor to meet the DBE goal and then were dropped because the prime contractor chose to do the work themselves. This was seen as a “bait and switch” by DBE firms that complained prime contractors were circumventing CDOT’s procurement rules to win awards and not following through with the work as proposed. This was discussed by a woman-owned trucking company at a public hearing. The owner said,

“One instance is being used – your numbers being used as a DBE, and then having the contractor say, ‘Oh, we’re going to use our own trucks.’ Instead of using my trucks for the job, they say, ‘Oh, well, we have trucks sitting, so we’re going to use our own trucks.’ So, work that we had planned on for the year is taken away.”

During an interview, a woman-owned DBE firm located in Grand Junction said that they have had incidents where a prime contractor will include them in a bid to meet the DBE goal but have no intention of using them because the prime does the same work. The business owner stated,

“There was a prime that used our numbers to get the job and then they only used us on a limited basis and they used their personnel for a majority of it. That’s a loophole in the system that nobody seems to get.”

An Asian DBE business owner shared comments on the business survey about how the good faith effort process results in wasted time and effort on the part of the DBE because the prime contractor plans to perform the work. He said,

“Many Prime Contractors do bid shopping at bid time and specs are not good enough to discern quality. One Prime Contractor routinely asks for bids but say they also do the same work. We stopped bidding to them after they refused to debrief us on how the bids turned out after award.”

Another woman-owned firm shared historical data that proved prime contractors will most likely self-perform work if not forced to leverage DBE firms. She talked about how her business was affected when women-owned businesses were not included in the DBE program and said,

“A few years back when women were not considered minority for CDOT, I lost 38% of my business to large corporations doing their own traffic control.”

At a public hearing, a woman-owned DBE firm that provides right-of-way services said that they have been told directly by a prime contractor that they would not use this firm if she was not a DBE. The prime contractor was surprised that they would subcontract right-of-way services rather than self-performing that work on a transportation project. The DBE firm recounted the following:

“We found, in our business, it’s very, very white-male oriented and we would have had not chance without the DBE. In my business, the level of special expertise is not necessarily identified, and so an engineer will say, ‘Well, I’d rather pay my guys to do something than you.’ I had a Vice President of a major prime telling me, ‘You’ll never work for us.’ And I said, ‘Well, we do.’ And he said, ‘Well, you must be a DBE because you wouldn’t work for us otherwise.’

In general, most DBE firms felt that prime contractors would self-perform the work or use non-DBE firms for specialty areas that they do not provide. A woman-owned DBE firm summed up this opinion by saying,

“As it has been for all of history, the majority of general and subcontractors use a certified firm for only the amount required by the contract to be awarded to a certified firm. The program has no method to see that our certified firms would not be used unless the issue was forced. Yes, there are some larger specialty companies that could get work outside, due to what they do, but the majority of us are still only getting tidbits. After being in the program since 1985, I have seen significant history in the usage of the program by GC’s and know if it weren’t for the program I would not be around today.”

This was also supported by a prime contractor that said if there were no DBE goals, they would do most of the work themselves. For those specialty areas that they do subcontract, the business owner said they feel minority firms are generally higher priced than their non-minority counterparts. The one exception is geotechnical services. This could be another reason why there is an overutilization of DBE geotechnical subcontractors. He went on to say,

“If there wasn’t affirmative action, a lot of the companies would do the work themselves, the full service companies. We wouldn’t because we don’t do surveying and there are a couple of other things we don’t do. What we found out though is, some of the minorities were higher priced than the non-minorities, for instance geotechnical firms. We wouldn’t go to a non-minority geotech firm and get a better bid, same with surveying. And we do it on a private sector work. We don’t use minorities because they’re too high priced. They’re playing a game as well. We have to satisfy that goal, so their prices are high.”

**Primes drop DBEs after contract award:** Another indication that prime contractors are finding ways to self-perform work slated for DBE firms was the number of DBE firms that had experienced problems with being dropped from contracts. On the survey and shown in **Table 7-18** below, business owners were asked if their firm ever experienced an incident where they submitted a bid to a prime contractor and then were dropped by that prime after contract award. This was perceived as an issue primarily by DBE firms. Black-owned firms and Hispanic-owned firms had the greatest problem with their bids being dropped.

In fact, a Hispanic business owner shared at a public hearing that he had done the calculations for his firm and 40 percent of the times that they bid, primes used their numbers and yet they never used them for work on the contract.

**Table 7-18  
Dropped by Prime Contractor After Award**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Submitted bid as a subcontractor and then dropped by the prime with no explanation after the prime was awarded the contract							
Yes	33.3% (3)	75.0% (9)	57.1% (12)	100.0% (4)	46.6% (27)	32.7% (18)	45.9% (73)
No	44.4% (4)	25.0% (3)	33.3% (7)	0.0% (0)	39.7% (23)	50.9% (28)	40.9% (65)
N/A	22.2% (2)	0.0% (0)	9.5% (2)	0.0% (0)	13.8% (8)	16.4% (9)	13.2% (21)
<b>total</b>	9	12	21	4	58	55	159

The perception is that prime contractors are forced to use DBE firms in order to meet good faith effort requirements and contracting goals but, in many cases, they would rather self-perform the work or work with other firms with whom they have an existing relationship.

#### **7.5.6 M/W/DBE Barriers to Contracting with CDOT**

On the business survey, business owners were provided a series of factors and asked whether any factors interfered with the company's ability to bid on a CDOT transportation project. The factors outlined potential barriers to contracting with CDOT or prime contractors on projects. The following is a summary of the most prevalent issues for M/W/DBE firms. The results of all survey questions are provided in **Table 7-32** on pages 7-99 to 7-103. The varying

totals for each of the questions were due to individuals choosing to leave some of the categories blank.

It is important to note that the one Native Hawaiian or Pacific Islander-owned firm that responded to the survey did not complete this section of the survey and therefore all totals for that race/ethnic group were zero. However, this was not necessarily true for the community as a whole and therefore this group was not included in the analysis.

**Limited Information:** The survey asked respondents whether having limited information about a bid or project prevented them from bidding or obtaining work with CDOT. According to the survey and shown in **Table 7-19** below, more than 50 percent of M/W/DBE firms believed they were not given enough information regarding the opportunities available to them. It is significant to note that only White male-owned firms had a higher percentage of “no” responses. In all other race/ethnic categories with the exception of Native Americans, virtually half of the respondents indicated this was a problem.

**Table 7-19**  
**Limited Information about Projects**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Limited information about the bid or project							
Yes	58.3% (7)	56.5% (26)	51.1% (24)	37.5% (6)	49.1% (53)	34.0% (35)	45.5% (151)
No	33.3% (4)	32.6% (15)	34.0% (16)	18.8% (3)	33.3% (36)	51.5% (53)	38.3% (127)
N/A	8.3% (1)	10.9% (5)	14.9% (7)	43.8% (7)	17.6% (19)	14.6% (15)	16.3% (54)
<i>total</i>	12	46	47	16	108	103	332

A Black woman-owned construction firm shared an experience where she was not able to bid on a project the firm was qualified to perform because CDOT was not willing to provide the necessary information. On the survey she commented,

“I called one of [CDOT’s] maintenance folk to arrange a meeting to look at the anti-icing systems, and he told me that he wouldn’t meet with me after he had been asked to do so by the engineer, and as a result we were not given adequate information to prepare a bid. As a distributor of product we are unable to prepare bids to submit to primes, subcontractors or any other firm without first knowing what the design is or will be, however the other firms that may have worked on systems previously were allowed the opportunity to visit the site and meet with the manufacturer’s reps.”

**Limited knowledge and understanding of processes:** Qualified firms may experience difficulty securing contracts if those firms fail to meet procedural requirements for submission. Such requirements can include specific forms that must accompany bids, business licenses prior to consideration by a procuring agency, or other administrative requirements. Firms may be otherwise qualified, willing and able to provide goods or services but lack an understanding of the proper methods and mechanisms to promote the firm to procurement decision makers. This lack of knowledge could preclude firm participation in the procurement process.

As shown in **Table 7-20** below, 43 percent of M/W/DBE firms indicated that this was a problem compared to 31 percent of White male-owned firms. Black, Hispanic and Woman-owned firms seemed to have the most problems in this area. During follow-up interviews, several DBE firms commented about receiving outreach materials from CDOT regarding classes but most of the classes were offered in the evening and not convenient for the owners. This hindered their ability to become more educated about CDOT bidding processes. There was a general desire to have more class instruction during the day.

**Table 7-20  
Limited Knowledge of CDOT Processes**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Limited knowledge and understanding of CDOT purchase/ contracting policies and procedures							
Yes	25.0% (3)	43.5% (20)	58.3% (28)	37.5% (6)	39.6% (42)	30.8% (32)	39.5% (131)
No	75.0% (9)	43.5% (20)	27.1% (13)	18.8% (3)	47.2% (50)	55.8% (58)	46.1% (153)
N/A	0.0% (0)	13.0% (6)	14.6% (7)	43.8% (7)	13.2% (14)	13.5% (14)	14.5% (48)
<i>total</i>	12	46	48	16	106	104	332

One Hispanic owner of a DBE trucking firm that was a former CDOT employee but a new business owner said that he had not yet been successful in navigating through the CDOT bidding contracting processes for small business. He said that this lack of knowledge was the greatest barrier to contracting with CDOT. He said,

“I’m trying to figure it out, to get in the bidder’s loop. I’m trying to get in touch with a consultant at the CDC to start bidding on projects. It’s a huge responsibility, and the first time you do it, you want to do it right. You don’t want to come up

short. There’s a lot to lose, a lot to learn. The information’s there in the plan room at the office, but I’ve looked at them and my lack of knowledge and inexperience hinders me from submitting bids.”

**Stringent pre-qualification and bid specifications:** The survey also probed into owner sentiments about the ability of their firm to meet specifications in requests for quotes, bids and proposals. Stringent pre-qualification requirements can be advantageous for procurement officials as a filtering mechanism to sort out firms in the selection process but those same stringent requirements can also be a barrier that discourages newer and smaller firms seeking to develop business relationships with procurement agents. As shown in **Table 7-21** below, this was an issue particularly for Black-owned firms (52 percent).

**Table 7-21**  
**Stringent Pre-qualification Requirements**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Pre-qualification requirements were too stringent							
Yes	25.0% (3)	52.3% (23)	27.1% (13)	18.8% (3)	25.2% (27)	26.2% (27)	29.1% (96)
No	66.7% (8)	34.1% (15)	45.8% (22)	37.5% (6)	47.7% (51)	57.3% (59)	48.8% (161)
N/A	8.3% (1)	13.6% (6)	27.1% (13)	43.8% (7)	27.1% (29)	16.5% (17)	22.1% (73)
<i>total</i>	12	44	48	16	107	103	330

Specifically, a Black woman-owned DBE construction firm said that the biggest issue they face when bidding on CDOT projects is the bonding requirement. When asked about pre-qualification requirements being too stringent, she said,

“They are for a small business because the projects are so big that we have an issue with bonding. Being a small business we have to grow our bonding and so the jobs come out and they’re so big that the bonding company says, ‘Well, no we’re not going to bond you on that, even though we may think you’re capable of doing it.’ It’s just too big of a risk for them.”

Another African American DBE highway construction firm discussed how the insurance requirements imposed by CDOT and carried down from prime contractors to subcontractors are



too expensive for small DBE firms to afford. When asked about pre-qualification requirements being too stringent the owner said,

“I’ll give you a good example. Keiwit Construction wanted us to do something. Then they came back and said, “Well, you gotta have an extra million in liability and extra million in workman’s comp and an extra million in automotive insurance.” And I said if I’m going to do that then my rates have to be this. And he said, “Well, nobody else does that. That’s just our requirement.” And, at that point you have to say if we’re going to pay all that extra money for insurance then we have to raise our rates. It’s not competitive at that point. A lot of them want a lot extra stuff that costs a lot of money and we can’t do it.”

One Black-owned traffic control DBE firm discussed how they struggled to compete against a Woman-owned DBE firm in southern Colorado. His perception was that prime contractors were holding his firm to stricter pre-requirements than CDOT or the other DBE firm preferred by the prime contractor. He provided an example of a prime contractor that sent a “stack of paperwork” with requirements to meet and said,

“One of the things that was required, even my insurance company was saying, 'what in the world are these people looking for?' They're looking for something that nobody around here's got anyway. If the insurance man is writing insurance for everybody that works on that job, and he don't know what it is, then it tells you something right there.

*Interviewer:* “So you're saying that the primes are holding you to different requirements, like with insurance and bonding, than CDOT is?”

*Response:* “Well, I'm saying that there's nobody else that has to do it. That's their scapegoat, in other words, if the insurance company that writes all the insurance for all the general contractors and the GC puts something in there and [the insurance company] doesn't even know what it is and [the agent] calls them up and says, 'hey we don't know what this is, what do you want us to do?' then there's something wrong.”

In summary, minorities and woman reported that they still encounter significant barriers to doing business in the public sector due to discrimination. They often suffer from stereotypes about their suspected lack of competence and are subject to higher performance standards than their White male counterparts. They encounter discrimination in the bidding process and on job sites. While achieving some success in being awarded CDOT contracts and subcontracts, M/W/DBEs report that it is still unusual for them to receive prime contracts. This is particularly problematic for design and engineering (consultant) firms.

A majority of M/W/DBEs feel that they would not receive CDOT work at all if there were no DBE goals because the prime contractor would self-perform the work or use preferred subcontractors. Minorities and women attributed this market failure to active and passive discrimination. Whether this would also hold true for small non-DBE firms is difficult to quantify

because the current DBE goal system has encouraged DBE subcontracting but not non-DBE firms.

Additionally, limited information about bids and projects as well as a general lack of knowledge about CDOT policies and procedures has hindered M/W/DBEs from obtaining CDOT contracts. For African Americans, stringent pre-qualification requirements have also been a barrier to contracting.

## **7.6 Analysis Of Small Business Issues**

Although there is anecdotal evidence that supports the existence of discrimination against minority- and woman-owned businesses in the transportation industry, many of the issues and concerns regarding contracting with CDOT and prime contractors were prevalent for all small businesses. There was a general perception that Small Business Enterprises (SBEs) are not treated fairly or given an equal opportunity to compete for highway construction, design and engineering contracts.

A complaint that was heard across the board during the anecdotal gathering process was that the CDOT DBE Program favors a few large DBE firms that provide services in specific work codes such as geotechnical engineering and surveying, traffic control, and trucking. There were also many general concerns regarding contracting practices that were not supportive of small and emerging firms regardless of race/ethnicity or gender. A summary of the most prevalent issues is provided below.

### **7.6.1 Bid Shopping**

One widespread complaint found among small businesses of almost every race/ethnic and gender group was that prime contractors use unfair methods to comply with CDOT's bidding procedures. SBEs alleged that the bidding policies for construction contracts, as implemented by majority contractors, have a negative impact on small businesses because their bids are regularly shopped prior to the contractor's bid submission. The following issues related to bid shopping were found to be the most problematic for SBE firms.

***Primes pressure SBEs to lower bids:*** On the survey and during personal interviews, business owners were asked if they were ever pressured to lower quotes on a bid because of bid peddling or bid shopping by prime contractors. As shown in **Table 7-22** below, nearly 30 percent of subcontractors had been asked by a prime contractor to lower the costs of their initial bid or quote on a project. Although a majority of all firms with the exception of Native Americans indicated that this was not a problem, it is important to note that anecdotal evidence from

personal interviews and roundtables confirmed that bid shopping is a common practice by prime contractors.

**Table 7-22  
Prime Contractor Bid Shopping**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Pressured to lower quotes on a bid because prime contractor was bid peddling or bid shopping							
Yes	22.2% (2)	25.0% (3)	38.1% (8)	100.0% (4)	25.0% (14)	22.6% (12)	27.7% (43)
No	55.6% (5)	58.3% (7)	57.1% (12)	0.0% (0)	64.3% (36)	62.3% (33)	60.0% (93)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	10.7% (6)	15.1% (8)	12.3% (19)
<b>total</b>	9	12	21	4	56	53	155

This issue was most prevalent with Hispanic-owned firms (38 percent) and Native American-owned firms (100 percent). One Hispanic consultant said,

“On several occasions with design firms, they called on me to help them meet a goal. Then they’re ready to turn in the proposal and they asked me to lower my rate. My fee was \$85/hr. and that’s for the principal of the company, the owner. The same people were billing out at \$160/hr.”

Another incident recalled by a Black-owned contractor during a personal interview demonstrated that the pressure to lower a quote also happens after contract award.

“Some prime contractors shop the hauling bids after they have been awarded the contract or it is announced that they are low bidder. They will then go back to a DBE that did not bid the work and negotiate or just tell them what they are willing to pay. This nullifies the DBE that has worked on the bid and their price is shopped after the opening.”

A Hispanic DBE contractor said that he has experienced blatant bid shopping from prime contractors that show a competitors price and say they can get the work if they can beat the price. When asked if he had been pressured to lower a quote, he discussed an incident with a specific prime contractor:

“We bid a job and they said here’s your bid and here is your competition’s bid, it’s up to you if you want to beat this guy, if you want to lower your numbers to be lower than this guy. Yes, we have had that.”

**SBEs receive less work than expected:** As noted in **Table 7-23** below, 40 percent of all survey respondents said that they had received less work and pay than what they had

expected from a contract. Similar to the issue that DBE firms had experienced with being dropped by a prime contractor after contract award, more than 50 percent of Black-owned firms and 75 percent of Native American-owned firms had this experience. This was less of a problem for Asian, Hispanic, women and white male-owned firms.

**Table 7-23**  
**Subcontractors Receiving Less Work than Promised**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Did a job that required less work and pay than was contracted for							
Yes	22.2% (2)	50.0% (6)	28.6% (6)	75.0% (3)	37.9% (22)	27.3% (15)	40.0% (54)
No	55.6% (5)	16.7% (2)	61.9% (13)	25.0% (1)	51.7% (30)	60.0% (33)	52.8% (84)
N/A	22.2% (2)	33.3% (4)	9.5% (2)	0.0% (0)	10.3% (6)	12.7% (7)	13.2% (21)
<b>total</b>	9	12	21	4	58	55	159

SBEs complained that CDOT does not enforce accountability from prime contractors to use the subcontractors they proposed in their original bid. Ostensibly, this reduces the amount of work that is expected by the subcontractor and places an undue burden on the small business because they staff for the project and turn down other opportunities to ensure capacity for the job. On the survey, a woman-owned contractor commented about how this creates a significant resource management and cash flow problem for her business. She said,

“One problem is being asked to team on a number of projects resulting in my firm not bidding on others in case too much work comes in all at once. Then being left with only 10-20 percent actually coming in.”

This problem is made even worse when subcontractors are required to provide materials for a job and then the work is reduced. A woman DBE business owner talked about how a reduction in promised contract work resulted in a significant loss of capital. When asked if she had ever done a job that required less work and pay than was contracted for, she shared the following:

“I experienced that with guardrail last year. We bid a job with guardrail on it, we ordered the material, we paid to stockpile material for job, but when we got out there, they diminished the amount of guardrail required on project. So they deducted the amount of guardrail from the job. We were stuck with all this extra guardrail, and they said, ‘You can use this somewhere else.’ But no, it had sheet numbers that were specifically tied to the project, so I couldn’t use it anywhere else. So they said they’d have to “think about it” which means they won’t deal

with it, and we got stuck with the rail. If a DBE company is trying to get their heads above water, that wrecks them.”

Yet another woman-owned firm commented on how it had affected her business and that she had not received any support from CDOT in resolving this issue. The amount of time and costs incurred by a small business to resolve these types of issues with prime contractors without help from CDOT prevented many firms from pursuing public transportation work. She said,

“I am no longer willing to subcontract on a bid with CDOT due to repeated instances of being included in initial bid, then replaced with in-house staff. When assistance was requested from CDOT Procurement/DBE, I was advised it was my problem and would need to pursue legally with the prime contractor.”

In a similar situation, a Hispanic DBE firm provided a written statement regarding the lack of work that resulted from two awarded projects and the adverse impact this had on the business. The following is an excerpt from that testimony:

“Currently, our company is working with two different General Contractors on two different CDOT projects. The first is I-25 Widening with [prime contractor]. [Our company] was awarded the haul-off in the sum of \$280,000.00. To this day I have not received one cent from [prime contractor] and the project has been in works for over a year now. When the project first started there were other trucks hauling off the construction site, I called [prime contractor] to see why they hadn't called. I was told it wasn't my part of the job. Over a year later I still have not been called.

The other Contractor we are working with is [prime contractor] and the project is Wadsworth By-pass. It has been over a year working on this project. [Our company] was awarded \$900,000.00 in trucking/haul-off. To date we have been paid approximately \$241,000.00. We have consistently seen other trucks on this project and there is always an excuse why we were not called. I feel General Contractors have figured out ways to work the system, to pull the wool over CDOT eyes. The State is trying to help us small guys and large companies are figuring out ways to take more.”

A white male-owned ESB firm said that prime contractors will often include them in a bid in order to receive evaluation points but the primes were not always following through by actually using the ESB for contracted project work. He said,

“Although prime consultants have utilized my company during the bid process to earn points on their proposals, actual work received from the prime consultants has been very minimal, if any at all. Other than an initial minimal monetary benefit, there isn't a financial incentive for prime consultants to utilize an ESB. Although a prime might be interested in the skillset/quality of the subconsultant, there is no financial benefit to "hand over" work to the subconsultant.”

Another white male-owned ESB firm shared a similar experience related to a Non-Project Specific (NPS) contract:

“I currently have a prime that I teamed up with as an ESB - they were awarded a CDOT ID/IQ Contract several months ago, utilizing my firm to gain proposal points, and have stalled/avoided executing a Contract with me. I have been promised significant work as an ESB under an ID/IQ contract with a prime and very little work was passed along. There really isn't much financial incentive for a prime to continue utilizing an ESB.”

It is difficult to determine whether the lack of actual contract work flowing down to subcontractors is the result of prime contractors self-performing, using alternate subcontractors or an overall reduction in the project scope as originally planned by CDOT. In most cases, SBE firms were not notified as to the reason why they were not receiving promised work. This is described in more detail below.

**Primes fail to return calls:** Additionally, most of the small businesses that experienced a problem with receiving less work than contracted for also indicated that they were not advised as to the reasons for the prime contractors' decisions. As noted in **Table 7-24** below, 43 percent of M/W/DBE firms indicated that they were not contacted by the prime contractor after providing a quote. The subcontractor, therefore, did not know if the prime contractor submitted an offer without the subcontractor's participation or if the procurement opportunity was withdrawn by CDOT. This situation happened in more frequency with Hispanic-owned (52%) and Black-owned (42%) firms than with white male-owned firms (20 percent).

**Table 7-24**  
**Primes Failure to Contact Bidders**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Frequently contacted by a prime for inclusion in a bid and, after providing a quote, the prime did not return calls							
Yes	22.2% (2)	41.7% (5)	52.4% (11)	100.0% (4)	39.3% (22)	20.4% (11)	35.3% (55)
No	66.7% (6)	50.0% (6)	42.9% (9)	0.0% (0)	53.6% (30)	61.1% (33)	53.9% (84)
N/A	11.1% (1)	8.3% (1)	4.8% (1)	0.0% (0)	7.1% (4)	18.5% (10)	10.9% (17)
<b>total</b>	9	12	21	4	56	54	156

During an interview, one Hispanic-owned firm stated,

“I've received hundreds of requests for proposal from prime contractors and responded hundreds of times. It appears that we have never been on the winning

team. It seems strange to me. And, the prime contractors do not return calls after the bid opening. I sometimes believe they are receiving my proposal to show they've made attempts to work with DBEs, but they never end up using us."

Similarly, a Black business owner said that in his experience,

"Primes rarely respond to requests to reveal if the DBE bid was high and by how much, leaving the bidder in the dark to understand if he is competitive or leaving money on the table."

A woman-owned DBE trucking firm testified at a public hearing that it is typical to never hear from the prime contractor after providing a quote. She gave an example of a bid for a project in Burlington and said,

"One of the frustrations that I'm having is when we do enter numbers to a prime contractor, that they are not courteous enough to return phone calls. They indicate that they have used our numbers, but to have them return a phone call, whether it's the estimator or just someone general in the office, no one ever returns phone calls."

*Interviewer:* "And you said that when you submit bids to primes, they use your numbers. Now, did those primes win those contracts?"

*Response:* "Yes. As far as I know, on a job that we bid on for the summer, it was indicated that they were going to use our numbers. I don't know if they did, in essence, use our numbers, but...in calling the general contractor, we never, ever received a phone call back."

As a result of these practices, SBE subcontractors have been limited in their ability to learn from the bidding experience and they are unable to accurately plan for and staff awarded project work. An Asian business owner stated,

"One Prime Contractor routinely asks for bids but say they also do the same work. We stopped bidding to them after they refused to debrief us on how the bids turned out after award."

Another Hispanic DBE business owner said that this seems to be more of a problem when working with prime contractors on CDOT projects. He talked about how this practice has affected his business in an interview. He said,

"I noticed that we get invitations to bid and the general contractors communicate with us on a limited basis before the bid. But after you submit a bid, it's very, very, very difficult to get anybody to call you back. To get feedback, so you have no idea whether you're shooting blanks or what? I mean, we know where we're at as a contractor, because we not only bid...I mean we started to bid to CDOT for the last two years. We bid a lot to other entities like City of Aurora, Arapahoe County, and this is very similar work. And we have no problem getting work there. But we do have a problem getting work with CDOT. This year we must have bid 50 projects with CDOT and we haven't got one."

It is evident from survey responses and personal interviews that bid shopping is a perceived problem that exists in the Colorado contracting community. Small businesses believe

that CDOT contracting practices and procedures seem to be structured to encourage bid shopping, particularly in relation to good faith efforts. Based upon the anecdotal evidence, it appears that prime contractors' prices are fixed at the time of bid submissions, whereas subcontractor prices are merely numbers from which to begin negotiation. SBE subcontractors and large prime contractors operate under two different standards to the detriment of SBEs. In other words, a prime contractor can be the low bid and be guaranteed the project, but an SBE is not guaranteed the contract even if the SBE subcontractor is the low bid at the time of bid submission.

It is also evident that prime contracts have used adverse bid shopping techniques that force small businesses into working below market rate or at a loss in order to get experience on CDOT contracts. How this is evaluated by CDOT is not known by the small businesses. Prime contractors often pressure SBE firms into lowering bids to be included on the team or after contract award so that the prime can retain more of the project. White male small business owners often do not even get the chance to bid or are forced to bid below market rate in order to compete against DBE firms that are used to meet contract goals in certain work codes. For DBE firms, bid shopping is more of a problem as it relates to prime contractors including them in bids to meet DBE goals and then using in-house staff to complete the requirements, leaving the DBE firm with little if any of the awarded work. Small DBE firms also encounter problems of having to bid against large DBE firms that have more resources and are able to provide economies of scale to underbid smaller firms.

#### **7.6.2 Prompt Payment**

Another area that produced significant complaints from SBE owners was the fact that prime contractors do not pay subcontractors in a timely fashion. SBEs complained that after they completed their portion of the contract, prime contractors would unreasonably and unfairly withhold payment. This practice is pervasive and severely impacts SBE business operations because these companies are small and nonpayment produces significant cash flow issues. SBEs often do not have the cash reserves available to maintain their business operations when they do not receive timely payment for work completed. Therefore, SBEs are disparately impacted by a prime contractor's failure to issue prompt payment.

As noted in **Table 7-25** below, subcontractors were asked on the survey if they had problems with prime contractors paying them on time. Nearly half (48 percent) of all responding firms had experienced a delay in payment from a prime contractor. Almost 60 percent of the White women-owned firms, 66 percent of Black-owned firms and 49 percent of Hispanic-owned



firms indicated that prompt payment was an issue. In fact, one Hispanic DBE business owner said that 75 percent of the time prime contractors do not pay on time and it takes at least 90 days to get paid.

**Table 7-25  
Late Payment by Primes**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Had problems with the prime contractor paying on time							
Yes	33.3% (3)	66.7% (8)	42.9% (9)	100.0% (4)	59.6% (34)	32.1% (17)	48.4% (75)
No	44.4% (4)	16.7% (2)	52.4% (11)	0.0% (0)	35.1% (20)	56.6% (30)	43.2% (67)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	5.3% (3)	11.3% (6)	9.0% (14)
<b>Total</b>	8	12	21	4	57	53	155

The following are comments from business owners regarding the impact that late payments from prime contractors/consultants have on their businesses.

**SBEs suffer under “pay when paid” clause:** One White woman-owned firm shared during an interview that it often takes 90 days or more to get paid by prime contractors because the primes do not invoice in a timely manner. Because most subcontracts are “pay when paid,” subcontractors are reliant on the prime contractor to ensure proper invoicing. She said,

“The problem with it is sometimes they tell us we have to have the invoice in by the 5<sup>th</sup> of the month so they can get it on their invoice and we do that and it doesn’t get put on their invoice then it sits at their place for at least 30 days. Or some of them aren’t invoicing every month. We just had one where we did the work in March and we started calling on it this summer saying, ‘When can we expect payment,’ and they said, ‘Oh, we didn’t invoice it until July.’ The paid when paid thing.”

Another woman-owned firm said she had the same problem with payment delays because of the “pay when paid” clause in subcontracts. She said,

“Depending on the Region, invoice payment has ranged from 45 days to 7 months after submittal. The Prime's indicate that they get it to us as soon as they get paid, meaning they may wait 7 months too. It is difficult as a small business to carry that and so we commit to other work.”

**Cash flow issues prevent SBEs from taking on more project work:** Payment delays also negatively impact all small businesses that are required to carry the costs of supplies until they are paid. Because this is often as much as 180 days from the time they order supplies,

their cash flow is reduced to a point where some are not able to take on other project work. One Black owner of a traffic control company said,

“So I’m going to bring that sign out and I bid that sign for \$100 for a two-year job. They pay you \$50 for that sign then 220 days later, they pay you the remaining 50%. They pay you half, but the big lump sum payment isn’t until the job is 75% done. So you’re sitting on that money for the whole length of that job. Now, the contractors get paid every month. But the only thing CDOT pays for every month is your labor – the flagging, the traffic control supervisor, etc. But the equipment you don’t get until the job’s over, so you’re set up to lose money.”

The lack of prompt payment places a significant burden on SBEs. Because these firms are small and often emerging, they do not benefit from economies of scale when purchasing supplies or paying for direct overhead costs, and often do not have access to large lines of credit, which would provide sufficient cash flow to initiate several projects simultaneously that require up-front cash outlays. As one Black business owner stated:

“ESB businesses are always low on operating capital and the time it takes between the completion of work and the first paycheck gets the firm in a worse cash position. The firm is required to pay its bills weekly but does not get paid from the prime for 90 days from the time work begins. This continues to keep the ESB in a cash poor position and is always behind its obligations.”

**SBEs “bank roll” projects:** A woman-owned business discussed how slow payments by CDOT and prime contractors stretch small subcontractors out financially. Although small businesses typically have more limited cash flow, these companies end up bankrolling projects by not getting paid in a timely manner. She said,

“If you’re not paid on projects that you’re already on and you have a huge cash flow problem, then you’re unable to enter into the new network of jobs that are coming out. In this construction industry in Colorado, you’re paid from the time that the job starts, approximately six weeks later, and because a lot of the jobs are federally funded, they require DOL wages which means you must pay your employees every single week.

If you’ve got a job with ten flaggers and a supervisor and trucks and different things, depending on what the classifications are, that’s a lot of money going out, out, out, out and then you have to beg, borrow and steal practically to get your money on the sixth or seventh or maybe even the eighth week and for small disadvantaged businesses. That is extremely tough and we don’t have the support. Prime contractors have the same problem but if CDOT, based on the Department of Labor laws, is requiring us to pay our people every single week, and it’s on a guaranteed project that there’s guaranteed tax payer money there, then we should also, particularly the DBE’s and small businesses because it’s a huge burden.”

This situation was reiterated by another woman-owned trucking firm that said she has been forced to borrow money or pull from a line of credit in order to pay her employees and subcontractors on a CDOT project. She said,

“We are required, while on job site, to pay our trucks on a weekly basis. We have had promises, as well as signed contracts stating that we would be paid within 30 days of receipt of our invoice. It's usually 60 to 75 days. It's pretty tough to operate. I don't feel that it's fair that I have to go borrow money when that money is owed to me.”

**CDOT provides limited assistance in payment issues:** SBE firms often have difficulty obtaining needed help to resolve prime contractor issues. Many SBEs said that CDOT is not willing or able to assist with a resolution saying that it is a contractual issue between the prime contractor and the subcontractor and therefore not CDOT's problem. This may be attributed to a lack of understanding about CDOT procedures and what CDOT can legally offer in terms of assistance.

One woman business owner provided a specific example that demonstrated CDOT's lack of support when dealing with billing and payment issues. She provided a written statement that included a letter to the CDOT Director of the Division of Transportation Development regarding CDOT's lack of “reasonable and consistent billing processes.” Specifically, she addressed a requirement placed on her company by CDOT to pay her subcontractors prior to submitting invoices, and provide proof to CDOT of those payments. An excerpt of her statement included:

“I wrote the letter after the staff person who was at the head of the business office in the Division of Transportation Development wrote in an e-mail in response to my questions something along the lines of, ‘Well, if they have to take out a loan to be able to pay their subcontractors that's the way it is.’ There is no understanding of the burdens small businesses carry in terms of cash flow.

We cannot get a clear set of guidelines from CDOT on the invoicing process, their requirements are excessive from an administrative standpoint – both in terms of cost and in terms of exceeding the Federal Transit Administration requirements, and there does not seem to be a clear understanding of the differences between standards for purchased services and funds that are passed through to operators nor the difference between audit standards and invoicing standards.”

A Hispanic DBE business owner shared his frustration with the lack of support from CDOT and said that prime contractors hold all the power and small businesses do not have the resources to fight back. He said,

“I'd like to see CDOT do something about the general contractors. The problem lays right there because they put the jobs out for bid, the general contractor gets the jobs, and they do whatever the heck they want with it. It pretty much belongs to them. They can hire and do whatever. I think the root of the problem is the sub enforcement, compliance enforcement, by CDOT.”

**Primes do not release retainage in a timely manner:** There were also problems with retainage being released in a timely manner. As shown in **Table 7-26**, slightly more than 30

percent of all responding firms had experienced problems with a prime contractor failing to release retainage on time. At least 40 percent of each minority group, with the exception of Asian Americans, had experienced this situation.

**Table 7-26**  
**Failure to Release Retainage**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Prime contractor failed to release retainage in a timely manner							
Yes	0.0% (0)	41.7% (5)	47.6% (10)	100.0% (4)	26.3% (15)	29.1% (16)	31.7% (50)
No	77.8% (7)	41.7% (5)	47.6% (10)	0.0% (0)	57.9% (33)	56.4% (31)	54.4% (86)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	15.8% (9)	14.5% (8)	13.9% (22)
<b>total</b>	9	12	21	4	57	55	158

The survey results showed that it was less prevalent among woman-owned and White male-owned firms. However, one woman-owned traffic control company did discuss during an interview how difficult it was to obtain retainage fees on time. She said,

“They hold onto retainage as long as they can. They hold it until you throw a fit. It just means that you’ll throw a fit for the entire time of the contract because they’ll throw you so many curves and take up so much time, and you never get paid until the project’s over. Sometimes you never get paid anyway. This business is fast-paced. You have to get all the work done, manage all those people, satisfy everyone and try to collect your money. You lose track of retainage and you don’t have time to pick it up. So you go back in the winter when it slows down, and see all your uncollected retainage and try to collect. A lot of them you never, ever get paid.”

Similar experiences recounted by a Black business owner at a roundtable discussion included his struggle with several prime contractors to get paid for completed work and then having to fight for the release of retainage. He said,

“The main problem we have is with pay. I had a project down in Pueblo and I, well, basically I got messed out of a lot of money on the project and just kind of settled out of it just to make sure that we would possibly work with the company again. Another project I had that we did work, we finished the work and they kept our pay. We had to keep going back and forth on invoices, the engineer swore he didn’t know anything about it and at the end he found out he made the mistake but this is about three months later and you just lose money like that and I’ve still got a retainage that I’m waiting on right now on a project with CDOT. I don’t know when I’ll get the retainage. I need to send paperwork to try to get the

retainage. The company knows when they owe you. You don't have to keep sending them paperwork to try to get the retainage. So these are the main problems. It's pay with projects on CDOT."

This seemed to be a prevalent practice that is putting small businesses at a disadvantage because they do not have the same access to capital as larger firms. Many SBE business owners said that it often takes several months to several years to get paid retainage. One woman-owned firm never received retainage from a CDOT project that was completed two years prior. The firm was forced to write it off as a bad debt. When they questioned CDOT, they never received an answer as to why.

***CDOT does not provide assistance in securing retainage:*** The lack of support from CDOT in helping to resolve retainage issues was also discussed by a Hispanic business owner who said,

"I did a design-build project for [prime contractor] where I was the design[er] of record, and I subcontracted geotechnical and technical and put together a team to do bridge design. I just got paid my retainage last week [June 2008], for work done in October [2007]. CDOT says it shouldn't have been done that way, but they don't enforce it."

In summary, many small businesses have been subjected to delays in payment of 90 days or more for work completed. The amount of time it takes for subcontractors to get paid places a financial stress on small firms that do not have the same access to capital or funding reserves of larger businesses. Subcontractors must rely on prime contractors invoicing in a timely fashion and releasing retainage per CDOT regulations, which often creates a cash flow issue that prevents small businesses from competing on CDOT projects. Without additional help and proactive support from CDOT, many small businesses are financially barred from pursuing transportation contracts. A solution suggested by many small businesses was to implement progress payments. A Black business owner that had persistent problems with prompt payment suggested that progress payments for work completed would allow his business to operate more efficiently and avoid cash flow issues. He said,

"DBE contractors should not have to depend on x number of days after prime contractor receives pay. Progress payments could be determined by amount of progress DBE contractor has completed and no longer than 30 days apart."

### **7.6.3 Overutilization of DBE Firms**

There were numerous complaints from small business owners that there is an overutilization of DBE firms within the specific disciplines of geotechnical engineering, surveying, traffic control and trucking. This topic was pervasive and often pointed to the perception that there are only a few very large DBE firms that are obtaining most of the work in

these specialties. This has created a barrier for non-DBE firms in these specialties to obtain subcontracts on CDOT projects.

Preferential treatment of large DBE and “favored” DBE firms by prime contractors was found in the statistical analysis to negatively impact small DBE and non-DBE firms within certain work codes. Because DBE goals are set by CDOT as an overall percentage on each transportation project, this increases the likelihood that a prime contractor will fulfill the goal with the same preferred DBE firms.

***Overutilization causes unfair playing field in certain work codes:*** During an interview, a White male-owned geotechnical engineering firm discussed the barriers to contracting they have experienced due to the saturation of DBE firms in their industry. He rated CDOT contracting practices overall as “fair” but said that it was “extremely unfair” in his industry. Specifically, he said,

“With the way the current goals are set up in the DBE program, what we’re seeing is an overconcentration of certain niche design firms on highway design projects. So when there’s a large multi-disciplined project, the prime consultant who’s going to set up their team for the project, they are consistently picking the same DBE geotechnical firms for every project. So, it makes it difficult. We can’t team with those firms. They’re satisfying the stated goals but they’re using the same firms time and time again. And, no matter how many times we knock on these prime consultant’s doors, they just tell us we’re sticking with these same guys to meet the goals.”

When asked how this has affected their ability to do business with CDOT, he said,

“In this office anyways, we’ve stopped submitting on CDOT stuff. Maybe if an RFP comes up and we have some time...would we submit again? Maybe. But the last couple opportunities that have come up are for NPS contracts and it takes a lot of time to put those together. I can’t justify it because I already know that the deck is stacked against us. These firms that have relationships with these primes are in better position to win the NPS work because they’ve already got relationships with CDOT.”

This business owner also went on to say that he believes that the DBE program as a whole is well worth it and warranted because without it would be hard for women and minority firms to get work. As a result, his concern extended beyond his own firm to other DBEs in other disciplines. He continued by saying,

“I don’t believe the goals are addressing this overconcentration issue. As a result of that, if certain industries are being used to pump up these stated goals, like a 10 percent goal, if that’s being met by the geotechnical firms and traffic firms and surveying firms, what’s happening to the other firms? What’s happening to a civil design firm? How much opportunity do they really have if the goals are being met by just a few industries?”

**Overutilization of DBEs in geotechnical specialties:** Similarly, an ESB-only geotechnical firm said that the DBE program was of value but found that overutilization of DBE firms in his industry made it impossible to get CDOT work. When asked on the survey for his general opinion of the DBE program, he commented:

“Good idea. It negatively impacts our business because all the prime firms use geotechnical engineering services and surveying most often to fulfill the DBE goals first. This gives DBE firms in these areas a huge competitive advantage over us as simply an ESB firm.”

Another ESB-only design firm reiterated this position and discussed the struggles they have had trying to obtain subcontracts in the geotechnical specialty. The following are this business owner’s comments from the survey and a follow up interview.

“We have very few opportunities to work on CDOT projects because we are a specialty geotechnical engineering firm and this work is almost always subconsulted out to a few DBE firms who are taking advantage of the system. The big AE firms still prime all the work and then they find geotechnical engineers and surveyors to get their minority requirements. As a result, the pool of participants in these areas is small. There seems to be a preference from big design firms who do most things in-house except for G-technical and surveying maybe. So it seems like these large AE firms don’t want to give their own work away, so they default to G-technical and surveying, just like they do on the construction side with traffic control, and say, ‘Hey we can meet this percentage and not lose anymore work out of our hands because we’re subbing it out anyway.’”

When this business owner was asked in a follow up interview to provide a specific example, he related the following story:

“We worked on a project up in Blackhawk as a sub and had a meeting with CDOT and they were saying, there were several firms involved, not geotechnical, but a couple big players and myself, so one of the firms was saying, ‘Gee, we’d like to use company X on this project to pursue this, but we understand they won another big project right next door.’ And, CDOT said, ‘Well, we want to be very careful about the perception of us giving all the work to one company.’ And then it came to geotechnical and they asked about them and said, ‘Wow, this company’s done all the work.’ So, geez, wait, the team was concerned about on the lead side one firm getting all the work and spreading the work around, but then when it came to the sub role of geotechnical you’re like, ‘Ya, this firm does all the work and we’re close to the firm and we’re used to this one firm.’ So, how do we break in and get a chance if they’re used to working with one firm?”

One Hispanic-owned non-DBE design firm said that he cannot compete against the preferred DBE firms in geotechnical. As a minority without DBE certification, he feels he is at even more of a disadvantage. When asked in an interview whether his firm has been treated unfairly in the procurement selection process, he said,

“This happens even on the geotechnical side. Larger firms are using the same smaller firms for all their projects. The teams are set up well in advance, so the

teaming agreements are set up well before the projects even come out. Due to marketing, all the larger firms have full-time people who essentially play golf and buy lunch and breakfast for people. They find out what's going on and then and set up teams well before they come out.

The larger firms use DBE subs to do the construction management, but the DBE subs they're using are all testing and geotechnical. So they're meeting their goal, but the goal's being saturated project after project after project. So does the code say you can do that by teaming with this geotechnical firm whether it's Yeh, RockSol or (in the past) Kumar to perform all your geotechnical? How come you don't see any other firms out there doing CDOT work?"

**Overutilization of DBEs in traffic control:** Another specialty area that was consistently pointed to as having DBE overutilization was traffic control. In the case of one non-DBE traffic control firm that is certified as an ESB, ESB certification has not helped them obtain work with CDOT because prime contractors are using DBE traffic control firms to meet the requirement. This business owner stated that even though their bid is lower than the competing DBE firm, the prime will accept the higher quote in order to meet the project goal. At a public hearing and during a follow up interview, he shared the following frustrations:

"We're a construction traffic control company, and if you pull up the UDBE website, there's 26 DBE traffic control companies here in Colorado, 27 in the entire United States. And, I believe we're one of three that are not UDBE. Because of that imbalance, or overconcentration, it's really made it difficult for us. Primes won't even accept quotes from us because, 'Are you DBE?' is the number one question. We can be low, and they call us up and, 'Hey, your numbers look great! What's your DBE number? Oh, you're not DBE, we can't use you.' Click. Goodbye.

We cannot grow and expand as long as there is over abundance of traffic control companies that are UDBE and get the preference on contracts. We've been told, 'You have a good reputation and good price,' but since there are goals to meet, the primes use traffic control UDBE companies to meet the goal. It doesn't matter how low of a bid you are.

One prime, [company name], agreed to give us work and it cost them a \$2.3 million job because we are not DBE. This was a project on Highway 34. We were the lowest bid and Prime was penalized because we are not DBE and they could not use us and I think they lost the contract for using us on the bid. We never even had an opportunity to do work with them.

[CDOT] will call it an over saturation, they won't call it a [sic] overconcentration. I had a meeting at CDOT, don't remember her name, and I said look at the numbers, if this isn't over concentration, and she said, 'I wouldn't necessarily say overconcentration. Over saturation, yes. Overconcentration we'd have to fix that so we'll call it an over saturation.'"

**Overutilization of DBEs in trucking:** There is also a perception that there is an overutilization of DBE trucking firms by prime contractors on CDOT highway construction contracts. A woman-owner of a construction firm provided a written statement that alleged even



CDOT staff members are aware that DBE goals are typically met with trucking and other specialties. She wrote,

“In a case involving a job in Holly, Colorado in 2007, I attempted to broker aggregates and provide an alternate crushing proposal to the GCs on the bidder list. I contacted the RE’s office to discuss providing brokered aggregates and was told by a CDOT project engineer in the office that they had ‘never heard of a DBE aggregates broker’ and ‘didn’t believe’ that this was possible. They also suggested that the way that the GC’s would meet the DBE goals would be through trucking and traffic control and so on.”

In another example, a Hispanic owner of a DBE masonry firm with revenues of \$3 million - \$5 million but only \$100,000 from transportation contracts said that his inability to work in the transportation sector is because prime contractors that need to hit a certain DBE percentage will find it in a trade such as trucking long before they get to masonry. He commented on the survey:

“How can CDOT insure that an equal mix of minority trades receive work on a project? It seems that a GC will make their quota on one trade and leave the other minority trades out. Example: A project calls for 8% DBE/MBE participation and the GC meets the quota with his trucking sub-contractor thus leaving no opportunity for the other minority trades that could have been on that project such as the Landscapes or Masons etc.”

***Overconcentration also prevents large firms from competing effectively:***

Interestingly, this overconcentration has prevented even large White male-owned firms from getting work in the geotechnical arena. In a written statement and at a public hearing, a member of a large national geotechnical/materials testing firm with 40 employees at branch offices in Denver and Colorado Springs said that their firm has been unsuccessful in obtaining CDOT work because geotechnical services are consistently being performed by DBE firms. He stated:

“The door does not seem to be open to non DBE/ESB geotechnical and materials testing firms attempting to attain this work. We have been told by more than one Prime that we will have a tough time as there are several DBE geotechnical consultants which provide these services to CDOT (through the prime) that do a good job. Sort of assuming all DBE percentages are attained through the geotechnical portion of the design contract. They just say, ‘We have three DBEs that do a good job, they are certified with CDOT as DBE, we’ll get our percentage there.’ Also, only a handful of geotechnical firms were on this “Prime” DBE list, with more than 40 geotechnical firms in the local market. That in itself is the definition of disparity.”

A similar situation was recounted at a public hearing by a representative of a non-DBE national transportation sector leader that has been in business for 43 years. He stated:

“In attempting to team on the design side with large AE firms...we’ve been denied opportunities for teaming, as the AEs planned on meeting a significant portion of

the required DBE component with the DBE geotechnical firms. Typically, the requirements on the project are running 10 percent or higher, and geotechnical work on its own, will fulfill approximately 7-1/2 percent of these DBE requirements. One of the challenges that we see...is that this is a fairly common practice, and it lends itself to a perceived, if not real, overconcentration of DBE geotechnical and construction materials testing firms being awarded work.”

In summary, a perception exists that there is overutilization of DBE firms in certain work codes creating an unfair playing field for subcontractors. Because prime contractors can meet overall project goals by using a DBE firm in one specialty area, opportunities are not being spread around to other firms. The over-concentration of DBE firms in geotechnical services, surveying, traffic control and trucking has created a barrier to contracting for all firms regardless of race/ethnicity, gender and size.

#### **7.6.4 Negative Perceptions Regarding Small Business Capabilities**

Another consistent theme uncovered in the survey and interviews was that small businesses, regardless of race, ethnicity or gender, struggle with negative perceptions and attitudes regarding their capabilities in the business world. Many said that CDOT does not perceive small firms as competent and able to prime transportation contracts because of the size of their business. The perception is that CDOT favors larger White male-owned companies and they are not willing to look at a small business as prime contractors. A Black DBE business supported this perception by saying,

“There are negative stigma and stereotypes to the certifications. It helps in one regard because it’s your only chance at doing work as an MBE, WBE, but on the other hand, once you use those letters at the end of your name, you’re pigeonholed into what you can do.”

Similarly, a White male-owned ESB firm said that they get treated differently by CDOT because they are a small firm. CDOT does not perceive them as able to manage projects as a prime contractor. He said,

“Because we’re small business, they’re very unfair to us compared to big business. That doesn’t mean we don’t get any work as a small business, but we are kind of put into a category of only being labeled to do so much, which I don’t agree with. I think we can do a lot more.”

***Contract bundling emphasizes lack of confidence in small businesses:*** CDOT’s perceived attitude regarding the lack of experience and ability of small businesses to manage large projects is becoming a bigger issue as more projects are bundled together into larger contracts. Larger contracts require greater firm resources for those that wish to be successful. Such resources include bonding and insurance requirements, human resources and access to

working capital. Large contracts may effectively exclude small and medium-sized firms because of the inherent requirements that exceed the capacity of those small and medium-sized firms.

As shown in **Table 7-27** below, survey participants expressed concern about the level of resources necessary to successfully compete for advertised work. Business owners reiterated their desire for smaller procurement offerings that would facilitate greater participation on CDOT projects. This seemed to be a problem mostly for Hispanic-owned firms (44 percent) although there was also a large percentage (39 percent) of White woman-owned firms that also reported issues with contracts being too large.

**Table 7-27**  
**Contract Too Large**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Contract was too large for your firm to take on							
Yes	38.5% (5)	36.4% (16)	43.8% (21)	26.7% (4)	39.3% (42)	35.3% (36)	37.7% (124)
No	61.5% (8)	45.5% (20)	35.4% (17)	26.7% (4)	41.1% (44)	51.0% (52)	44.1% (145)
N/A	0.0% (0)	18.2% (8)	20.8% (10)	46.7% (7)	19.6% (21)	13.7% (14)	18.2% (60)
<i>total</i>	13	44	48	15	107	102	329

In follow up interviews, several small business owners discussed how CDOT's practice of contract bundling has eliminated them from effectively competing for contracts. Rather than splitting out smaller tasks into individual contracts that would provide greater opportunity for small businesses to compete on a level playing field, CDOT has released more "Non Project Specific (NPS)" contracts that require a broader range of services from the prime contractor. This contract type often precludes M/W/DBE and ESB firms from being a prime contractor. As one Asian DBE business owner said,

"It is well known that the CDOT PM's are primarily responsible for scoping and developing the Statement of Interests and the CDOT selection teams want one of the top 10-12 large consultant firms on their projects. They do not want to work with new or smaller firms, which, unfortunately, the DBE firms are. Formerly, CDOT would have small projects which could be awarded to new or smaller firms, which could then develop their knowledge of the CDOT procedures and processes. These small projects have disappeared and been replaced with large Non-Project Specific contracts, which are awarded to large firms. DBE's are on

these teams in small, specific roles, which does not allow for them to advance their future possibilities to become primes.

Additionally, the primary selection factors are based on firm and individual experience. Unless a small firm is significantly comprised of ex-CDOT engineers (which is not the case for most, if not all, minority firms), they have little or no chance of being selected, especially when the selection committee individuals really want to select firms and individuals they have worked with before. We understand why CDOT staff would prefer to work with the same large firms, over and over. We also agree that efficiency and quality are enhanced when a relatively small group of firms and staff do all of the work. We do not know if this meets the true goals and objectives of the SBE/DBE/MBE/WBE program. If it does, then the system is working. If not, the system is not working. Until the large NPS contracts are discouraged and replaced, as much as possible, with smaller specific contracts or with small design-build contracts, minority firms will not be able to gain the experience they need to become primes. They will continue to participate, in a limited capacity, as small specialty subconsultants forever.”

***SBEs suffer from lack of relationships:*** Because there is a perception that CDOT is not comfortable using small contractors as primes, highly capable SBEs are persuaded to team with other firms. However, a lack of relationships often hinders their ability to obtain contracts. Small business owners may feel disadvantaged if they lack the business network with mentors, project managers and procurement officials to help them ferret through procurement processes. Business owners who have access to these networks may feel more confident in their ability to win contracts because they are able to vet ideas and issues with knowledgeable people.

As shown in **Table 7-28**, a lack of relationships and networking was a common problem for all M/W/DBEs (58 percent) garnering the highest percentage of affirmative answers for each race/ethnicity with the exception of White male-owned firms which was an almost equal split.

**Table 7-28  
Lack of Relationships**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Lack of relationships with firms that you could partner/team with							
Yes	61.5% (8)	60.0% (27)	70.8% (34)	56.3% (9)	50.9% (54)	44.2% (46)	53.6% (178)
No	38.5% (5)	28.9% (13)	18.8% (9)	6.3% (1)	34.9% (37)	46.2% (48)	34.0% (113)
N/A	0.0% (0)	11.1% (5)	10.4% (5)	37.5% (6)	14.2% (15)	9.6% (10)	12.4% (41)
<b>total</b>	13	45	48	16	106	104	332

In summary, many SBEs felt that CDOT does not trust the capabilities of small firms to manage large projects. This problem is being compounded by CDOT's practice of bundling smaller tasks/projects into large contracts and NPS contracts that are often awarded to large prime contractors without any work being passed down to smaller firms. Smaller firms also have encountered problems in contracting directly with CDOT because of the feeling that CDOT favors large White male-owned firms. For most SBEs, lack of relationships and difficulty in identifying appropriate teaming opportunities is a barrier to contracting with CDOT.

#### **7.6.5 Reverse Discrimination**

Several non-DBE contractors interviewed indicated that they experienced reverse discrimination. The majority of the complaints regarding this issue came from small specialty contractors who would compete against DBE subcontractors for the subcontract items in projects owned by CDOT. These contractors felt that the existence of the DBE goals operated to the disadvantage of the non-DBE specialty contractors in a discriminatory way.

***Small businesses struggle to compete against DBEs:*** During personal interviews, business owners of White male-owned firms were asked whether they thought certified minority-owned firms had a competitive advantage when bidding on CDOT projects. As shown in **Table 7-29** below, all of the White male-owned firms (100%) that responded to the question said that DBE firms have an advantage. They said that the DBE Program is unfair to small companies that must compete against minority and women-owned businesses because prime contractors

consistently chose DBE firms over non-DBE firms to meet goals, even when the non-DBE firm provided a lower bid.

**Table 7-29  
 DBE Competitive Advantage**

	Yes	No	No Response	Total
Do you think DBE firms have a competitive advantage when bidding on CDOT projects?	87.5% (14)	6.25% (1)	6.25% (1)	100.0% (16)
<b>total</b>	14	1	1	16

There were many instances cited by non-DBE firms where their bid to a prime contractor was lower than a DBE firm and yet they were not selected because the prime contractor was willing to risk submitting a higher total project bid in order to also meet the project DBE goal. A non-DBE firm that is ESB certified discussed the impact the DBE program had on their business:

“The UDBE program has made it very difficult for our small company to grow and even to stay in business. We are in the traffic control industry, which is dominated by UDBE companies. Many prime contractors throw our quotes out, even if we are low bidder, just because we are not UDBE-certified. Our main competitors are very large businesses (5-10 million gross receipts, which is huge for our industry) and they are UDBE which gives them an advantage over our small company. This program is great if you are a UDBE, but if you are turned down for certification, you will struggle like our company has. There should be a level playing field regardless of your gender or race. If there were a program to help "Underutilized Disadvantaged Businesses" it should be based on size and money; those are the key factors that make or break a business, not race or gender.”

**Lowest bid does not always win:** For specialty contractors and consultants, even being the lowest bidder is not helping them overcome the preference that prime contractors have for meeting the DBE goal. A non-DBE firm said,

“There have been many jobs in which we were low bidders but were not awarded the work because the primary contractor had to meet a minority percentage requirement and the easiest category to use to fulfill this requirement is with the concrete sub.”

Another non-DBE prime contractor shared this same experience. During an interview he said that it is extremely frustrating to continually submit bids that are lower than a competing DBE and not get the work. His statement included:

“Even though you provide the prime contractor with the low quote, the prime contractor sometimes uses a DBE subcontractor to meet his goals. So, it may not

matter how good you are or how low your quote is, the prime contractor may not want to go through the good faith effort and will elect to use a higher sub/DBE sub to meet the DBE goals. “

**Non-DBE firms struggle to compete:** Because of the lack of support for non-DBE firms on transportation projects, they are often underfunded and unable to compete against larger DBE firms. This problem was shared by a small non-DBE trucking company that was excluded from a contract by a prime contractor that had used them on other projects so the prime could meet the DBE goal.

“I have four tandem dump trucks. I have been working for over ten years in this field. I was working with a company for the past month doing wet batch on the highway. They were going to use me for the next project but they then told me they had to use a DBE. Well, this DBE company which is Hispanic, has a lot of trucks and they can keep using this DBE and take work away from my company. This happens to me all of the time and soon I will have to go out of business if something is not done about this problem. The program was good at the time but has been putting a lot of us small working people out of work. The DBE has now more opportunity to buy new equipment and get work. The system is unfair to us non-DBEs. I feel that I AM THE MINORITY at this time so we need to change the system or offer more jobs to everyone based on the knowledge of the work that is being done.”

**White male-owned firms experience reverse discrimination:** As seen in the **Table 7-30** below, 43 percent of the White male business owners that were asked during interviews whether they had experienced reverse discrimination said that they had encountered this situation.

**Table 7-30**

**Experiences of Reverse Discrimination**

	Yes	No	Total
Has your firm ever encountered reverse discrimination?	42.9% (6)	57.1% (8)	100.0% (14)
<b>total</b>	6	8	14

One non-DBE firm discussed how reverse discrimination has made it difficult for him to build relationships with prime contractors. When asked if he had experienced reverse discrimination, he replied:

“Any inquiries we get, the larger firms are primarily interested in us only if we’re a WBE or DBE or some other minority firm. They lose interest when they find out that we’re just a small business.”

Of those that answered “no” to this question, many still expressed a strong opinion about unfair treatment although they were reluctant to label it as “reverse discrimination.” One White male-owned A/E firm put it this way,

“I’m not sure it could be classified as reverse discrimination; it’s more like reverse preference. We as a small business have at least the same or better qualifications or experience as a WBE or DBE that’s being actively solicited, but there are percent requirements and the DBE’s and WBE’s get the work. I guess you could call it reverse discrimination.”

Many of the business owners who said they had experienced reverse discrimination were large prime contracting companies that compete against large DBE firms that are also prime contractors. The common frustration was that large DBE contractors are able to maintain disadvantaged status even though the DBE firm had significantly higher gross revenues.

“If there’s prime that’s a DBE, for instance [DBE contractor] is 100 percent DBE, they don’t have to expend any energy trying meet goals.

*Interviewer:* So, [DBE contractor], since they’re a minority prime, they don’t have to use DBE subs to meet goals?

Right. And, it’s interesting to note that they’re minority, yet I probably can’t bond the kind of work that they can do. So, here I am a non-minority company but they’re at a different level than I am, yet they’re disadvantaged, which is somewhat irksome. I mean, how disadvantaged are they if they’re bidding a \$10 million interchange project and I can’t bond that? Here’s a big company with big revenues and yet they’re disadvantaged.”

The disadvantage against large DBE firms was also felt by small DBE and ESB firms. By having to compete against DBE-certified firms that have much greater resources, ability to provide volume pricing and access to capital, small businesses in specialty areas are being shut out of contracting. There were numerous complaints about these large DBE firms not being underutilized or disadvantaged. The recommendation most often cited was to have DBEs graduate from the program after a certain time period or when certain revenue levels are met. The suggestions are to implement a DBE program as a development program, rather than an entitlement program; to facilitate the initial start up of an organization, not carry it long term.

## **7.7 Summary**

In general, minority-owned and women-owned businesses feel that they still encounter a variety of obstacles and barriers to doing business with CDOT and CDOT prime contractors. In most cases, race/ethnicity and/or gender appear to be a factor, especially for African American firms. M/W/DBE firms often suffer from stereotypes about their suspected lack of competence and qualifications and are frequently held to higher performance standards than their white male



counterparts. The anecdotal findings suggest that long held perceptions about M/W/DBE firms have improved but much more work is needed to achieve long-term parity in contracting. A majority of M/W/DBE firms feel that without the DBE Program, they would not have a chance to participate in CDOT contracts primarily because prime contractors would self-perform the work. It is evident that the implementation of DBE goals on CDOT contracts plays a major role in the use of M/W/DBE firms by prime contractors. Without encouragement to use small business subcontractors, M/W/DBE and White male-owned SBE firms will suffer.

Conversely, many White male-owned small businesses contend that the DBE Program prevents them from being competitive. Even with the ESB Program, the fact that M/W/DBE firms can also be ESB certified places white male-owned ESB firms at a disadvantage, especially with prime contractors, because the system is set up to favor the DBE. In general, all firms, not just M/W/DBE questioned whether contract awards are the result of objective, non-biased bidding and purchasing procedures by CDOT and whether favoritism affects the outcome. While minorities and non-minorities tend to raise this issue for very different reasons, the conclusion is the same for both groups. There is still concern about purchasing and contracting practices and outcomes which many businesses feel are the result of long standing practices, traditions, preferences, and patterns which limit participation.

**Table 7-31**  
**Subcontractor Potential Instances of Discrimination**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Design-Build format put the project out of reach for your company							
Yes	11.1% (1)	50.0% (6)	19.0% (4)	0.0% (0)	21.1% (12)	16.7% (9)	20.4% (32)
No	55.6% (5)	41.7% (5)	57.1% (12)	75.0% (3)	47.4% (27)	64.8% (35)	55.4% (87)
N/A	33.3% (3)	8.3% (1)	23.8% (5)	25.0% (1)	31.6% (18)	18.5% (10)	24.2% (38)
<b>total</b>	<b>9</b>	<b>12</b>	<b>21</b>	<b>4</b>	<b>57</b>	<b>54</b>	<b>157</b>
Submitted bid as a subcontractor and then dropped by the prime with no explanation after the prime was awarded the contract							

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

		Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
	Yes	33.3% (3)	75.0% (9)	57.1% (12)	100.0% (4)	46.6% (27)	32.7% (18)	45.9% (73)
	No	44.4% (4)	25.0% (3)	33.3% (7)	0.0% (0)	39.7% (23)	50.9% (28)	40.9% (65)
	N/A	22.2% (2)	0.0% (0)	9.5% (2)	0.0% (0)	13.8% (8)	16.4% (9)	13.2% (21)
	<b>total</b>	9	12	21	4	58	55	159
Prime contractor unwilling to provide necessary information to bid on project								
	Yes	0.0% (0)	66.7% (8)	52.4% (11)	25.0% (1)	29.8% (17)	11.3% (6)	27.6% (43)
	No	88.9% (8)	25.0% (3)	42.9% (9)	75.0% (3)	56.1% (32)	75.5% (40)	60.9% (95)
	N/A	11.1% (1)	8.3% (1)	4.8% (1)	0.0% (0)	14.0% (8)	13.2% (7)	11.5% (18)
	<b>total</b>	9	12	21	4	57	53	156
Prime contractor had a preferred list of vendors to the exclusion of your company								
	Yes	44.4% (4)	58.3% (7)	57.1% (12)	100.0% (4)	39.7% (23)	29.6% (16)	41.8% (66)
	No	22.2% (2)	25.0% (3)	33.3% (7)	0.0% (0)	44.8% (26)	57.4% (31)	43.7% (69)
	N/A	33.3% (3)	16.7% (2)	9.5% (2)	0.0% (0)	15.5% (9)	13.0% (7)	14.6% (23)
	<b>total</b>	9	12	21	4	58	54	158

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Placed on a contract to do one job and ended up doing another							
Yes	0.0% (0)	25.0% (3)	14.3% (3)	25.0% (1)	22.4% (13)	7.5% (4)	15.3% (24)
No	77.8% (7)	58.3% (7)	76.2% (16)	75.0% (3)	69.0% (40)	79.2% (42)	73.3% (115)
N/A	22.2% (2)	16.7% (2)	9.5% (2)	0.0% (0)	8.6% (5)	13.2% (7)	11.5% (18)
<b>total</b>	9	12	21	4	58	53	157
Did a job that required less work and pay than was contracted for							
Yes	22.2% (2)	50.0% (6)	28.6% (6)	75.0% (3)	37.9% (22)	27.3% (15)	40.0% (54)
No	55.6% (5)	16.7% (2)	61.9% (13)	25.0% (1)	51.7% (30)	60.0% (33)	52.8% (84)
N/A	22.2% (2)	33.3% (4)	9.5% (2)	0.0% (0)	10.3% (6)	12.7% (7)	13.2% (21)
<b>total</b>	9	12	21	4	58	55	159
Asked to do more work than what was stated in the bid without an increase in fees							
Yes	0.0% (0)	41.7% (5)	35.0% (7)	100.0% (4)	36.2% (21)	29.1% (16)	33.5% (53)
No	88.9% (8)	41.7% (5)	60.0% (12)	0.0% (0)	56.9% (33)	58.2% (32)	57.0% (90)
N/A	11.1% (1)	16.7% (2)	5.0% (1)	0.0% (0)	6.9% (4)	12.7% (7)	9.5% (15)
<b>total</b>	9	12	20	4	58	55	158
Had problems with the prime contractor paying on time							
Yes	33.3% (3)	66.7% (8)	42.9% (9)	100.0% (4)	59.6% (34)	32.1% (17)	48.4% (75)
No	44.4% (4)	16.7% (2)	52.4% (11)	0.0% (0)	35.1% (20)	56.6% (30)	43.2% (67)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	5.3% (3)	11.3% (6)	9.0% (14)
<b>Total</b>	8	12	21	4	57	53	155

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Completed a job and never received payment							
Yes	11.1% (1)	33.3% (4)	0.0% (0)	25.0% (1)	10.5% (6)	7.5% (4)	10.3% (16)
No	77.8% (7)	50.0% (6)	95.2% (20)	75.0% (3)	78.9% (45)	81.1% (43)	79.5% (124)
N/A	11.1% (1)	16.7% (2)	4.8% (1)	0.0% (0)	10.5% (6)	11.3% (6)	10.3% (16)
<b>total</b>	9	12	21	4	57	53	156
Paid less than the negotiated amount in the contract after completing a job							
Yes	11.1% (1)	50.0% (6)	9.5% (2)	75.0% (3)	19.3% (11)	12.7% (7)	19.0% (13)
No	66.7% (6)	33.3% (4)	85.7% (18)	25.0% (1)	70.2% (40)	72.7% (40)	69.0% (109)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	10.5% (6)	14.5% (8)	12.0% (19)
<b>total</b>	9	12	21	4	57	55	158
Asked to sign a form stating you had been paid when you had not been							
Yes	0.0% (0)	8.3% (1)	0.0% (0)	50.0% (2)	19.3% (11)	3.7% (2)	10.2% (16)
No	88.9% (8)	58.3% (7)	95.2% (20)	50.0% (2)	71.9% (41)	83.3% (45)	78.3% (123)
N/A	11.1% (1)	33.3% (4)	4.8% (1)	0.0% (0)	8.8% (5)	13.0% (7)	11.5% (18)
<b>total</b>	9	12	21	4	57	54	157
Prime contractor failed to release retainage in a timely manner							
Yes	0.0% (0)	41.7% (5)	47.6% (10)	100.0% (4)	26.3% (15)	29.1% (16)	31.7% (50)
No	77.8% (7)	41.7% (5)	47.6% (10)	0.0% (0)	57.9% (33)	56.4% (31)	54.4% (86)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	15.8% (9)	14.5% (8)	13.9% (22)
<b>total</b>	9	12	21	4	57	55	158

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	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Prime contractor held your company to higher performance standards than other contractors on the job							
Yes	0.0% (0)	41.7% (5)	19.0% (4)	33.3% (1)	8.8% (5)	5.6% (3)	11.5% (18)
No	88.9% (8)	41.7% (5)	66.7% (14)	66.7% (2)	77.2% (44)	81.5% (44)	75.0% (117)
N/A	11.1% (1)	16.7% (2)	14.3% (3)	0.0% (0)	14.0% (8)	13.0% (7)	13.5% (21)
<b>total</b>	9	12	21	3	57	54	156
CDOT personnel held your company to higher performance standards than other contractors on the job							
Yes	0.0% (0)	33.3% (4)	14.3% (3)	100.0% (3)	14.0% (8)	9.1% (5)	14.7% (23)
No	77.8% (7)	50.0% (6)	71.4% (15)	0.0% (0)	73.7% (42)	78.2% (43)	72.0% (113)
N/A	22.2% (2)	16.7% (2)	14.3% (3)	0.0% (0)	12.3% (7)	12.7% (7)	13.4% (21)
<b>total</b>	9	12	21	3	57	55	157
Asked to use your firm's DBE certification to be a front for a project that was being pursued by a larger business or non-DBE firm							
Yes	0.0% (0)	8.3% (1)	9.5% (2)	25.0% (1)	10.5% (6)	1.9% (1)	7.1% (11)
No	88.9% (8)	75.0% (9)	85.7% (18)	75.0% (3)	70.2% (40)	67.9% (36)	73.1% (114)
N/A	11.1% (1)	16.7% (2)	4.8% (1)	0.0% (0)	19.3% (11)	30.2% (16)	19.9% (31)
<b>total</b>	9	12	21	4	57	53	156
Pressured to lower quotes on a bid because prime contractor was bid peddling or bid shopping							

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

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	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Yes	22.2% (2)	25.0% (3)	38.1% (8)	100.0% (4)	25.0% (14)	22.6% (12)	27.7% (43)
No	55.6% (5)	58.3% (7)	57.1% (12)	0.0% (0)	64.3% (36)	62.3% (33)	60.0% (93)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	10.7% (6)	15.1% (8)	12.3% (19)
<b>total</b>	9	12	21	4	56	53	155

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Frequently contacted by a prime for inclusion in a bid and, after providing a quote, the prime did not return calls							
Yes	22.2% (2)	41.7% (5)	52.4% (11)	100.0% (4)	39.3% (22)	20.4% (11)	35.3% (55)
No	66.7% (6)	50.0% (6)	42.9% (9)	0.0% (0)	53.6% (30)	61.1% (33)	53.9% (84)
N/A	11.1% (1)	8.3% (1)	4.8% (1)	0.0% (0)	7.1% (4)	18.5% (10)	10.9% (17)
<b>total</b>	9	12	21	4	56	54	156
Prime contractor used your firm's name in bid without permission							
Yes	0.0% (0)	8.3% (1)	0.0% (0)	0.0% (0)	3.6% (2)	5.8% (3)	3.9% (6)
No	77.8% (7)	75.0% (9)	95.2% (20)	100.0% (4)	82.1% (46)	82.7% (43)	83.8% (129)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	14.3% (8)	11.5% (6)	12.3% (19)
<b>total</b>	9	12	21	4	56	52	154
Prime contractor changed your bid without permission							
Yes	0.0% (0)	16.7% (2)	0.0% (0)	50.0% (2)	7.0% (4)	3.8% (2)	6.4% (10)
No	77.8% (7)	66.7% (8)	95.2% (20)	50.0% (2)	80.7% (46)	80.8% (42)	80.7% (125)
N/A	22.2% (2)	16.7% (2)	4.8% (1)	0.0% (0)	12.3% (7)	15.4% (8)	12.9% (20)
<b>total</b>	9	12	21	4	57	52	155
Lost a bid because there were unknown or unclear requirements for the project							
Yes	0.0% (0)	25.0% (3)	19.0% (4)	50.0% (2)	21.1% (12)	21.1% (12)	20.6% (33)
No	77.8% (7)	58.3% (7)	66.7% (14)	50.0% (2)	66.7% (38)	66.7% (38)	66.3% (106)
N/A	22.2% (2)	16.7% (2)	14.3% (3)	0.0% (0)	12.3% (7)	12.3% (7)	13.1% (21)
<b>total</b>	9	12	21	4	57	57	160

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Asked by a prime to say that they had contacted your firm as part of a good faith effort but you were never asked to provide a bid							
Yes	0.0% (0)	16.7% (2)	20.0% (4)	0.0% (0)	8.8% (5)	3.8% (2)	8.4% (13)
No	77.8% (7)	66.7% (8)	75.0% (15)	100.0% (4)	78.9% (45)	69.8% (37)	74.8% (116)
N/A	22.2% (2)	16.7% (2)	5.0% (1)	0.0% (0)	12.3% (7)	26.4% (14)	16.8% (26)
<b>total</b>	9	12	20	4	57	53	155
Received a Request for Quote from a prime for work unrelated to what your firm does							
Yes	33.3% (3)	33.3% (4)	45.0% (9)	75.0% (3)	33.3% (19)	17.0% (9)	30.3% (47)
No	44.4% (4)	66.7% (8)	55.0% (11)	25.0% (1)	54.4% (31)	71.7% (38)	60.0% (93)
N/A	22.2% (2)	0.0% (0)	0.0% (0)	0.0% (0)	12.3% (7)	11.3% (6)	9.7% (15)
<b>total</b>	9	12	20	4	57	53	155
Dropped from the contract because a DBE goal was not required or it was already met							
Yes	33.3% (3)	25.0% (3)	52.6% (10)	75.0% (3)	31.6% (18)	3.8% (2)	25.5% (39)
No	55.6% (5)	66.7% (8)	42.1% (8)	0.0% (0)	49.1% (28)	73.1% (38)	56.7% (87)
N/A	11.1% (1)	8.3% (1)	5.3% (1)	25.0% (1)	19.3% (11)	23.1% (12)	17.6% (27)
<b>total</b>	9	12	19	4	57	52	153
Subcontracted by a prime for work on projects with a DBE goal but not for projects without a DBE goal							



**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

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	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Yes	44.4% (4)	66.7% (8)	57.9% (11)	50.0% (2)	35.7% (20)	5.7% (3)	31.4% (48)
No	44.4% (4)	33.3% (4)	42.1% (8)	50.0% (2)	42.9% (24)	69.8% (37)	51.6% (79)
N/A	11.1% (1)	0.0% (0)	0.0% (0)	0.0% (0)	21.4% (12)	24.5% (13)	17.0% (26)
<b>total</b>	9	12	19	4	56	53	153

**Table 7-32  
Barriers to Contracting With CDOT**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Limited information about the bid or project							
Yes	58.3% (7)	56.5% (26)	51.1% (24)	37.5% (6)	49.1% (53)	34.0% (35)	45.5% (151)
No	33.3% (4)	32.6% (15)	34.0% (16)	18.8% (3)	33.3% (36)	51.5% (53)	38.3% (127)
N/A	8.3% (1)	10.9% (5)	14.9% (7)	43.8% (7)	17.6% (19)	14.6% (15)	16.3% (54)
<i>total</i>	12	46	47	16	108	103	332
Pre-qualification requirements were too stringent							
Yes	25.0% (3)	52.3% (23)	27.1% (13)	18.8% (3)	25.2% (27)	26.2% (27)	29.1% (96)
No	66.7% (8)	34.1% (15)	45.8% (22)	37.5% (6)	47.7% (51)	57.3% (59)	48.8% (161)
N/A	8.3% (1)	13.6% (6)	27.1% (13)	43.8% (7)	27.1% (29)	16.5% (17)	22.1% (73)
<i>total</i>	12	44	48	16	107	103	330
Limited time to prepare bid package or quote							
Yes	33.3% (4)	58.7% (27)	46.8% (22)	50.0% (8)	38.9% (42)	32.4% (33)	41.1% (136)
No	58.3% (7)	30.4% (14)	38.3% (18)	12.5% (2)	38.0% (41)	49.0% (50)	39.9% (132)
N/A	8.3% (1)	10.9% (5)	14.9% (7)	37.5% (6)	23.1% (25)	18.6% (19)	19.0% (63)
<i>total</i>	12	46	47	16	108	102	331

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Too many other pending projects to take on additional work							
Yes	0.0% (0)	17.4% (8)	22.9% (11)	20.0% (3)	23.6% (25)	36.3% (37)	25.5% (84)
No	100.0% (12)	71.7% (33)	54.2% (26)	40.0% (6)	57.5% (61)	49.0% (50)	57.1% (188)
N/A	0.0% (0)	10.9% (5)	22.9% (11)	40.0% (6)	18.9% (20)	14.7% (15)	17.3% (57)
<b>total</b>	12	46	48	15	106	102	329
Limited knowledge and understanding of CDOT purchase/ contracting policies and procedures							
Yes	25.0% (3)	43.5% (20)	58.3% (28)	37.5% (6)	39.6% (42)	30.8% (32)	39.5% (131)
No	75.0% (9)	43.5% (20)	27.1% (13)	18.8% (3)	47.2% (50)	55.8% (58)	46.1% (153)
N/A	0.0% (0)	13.0% (6)	14.6% (7)	43.8% (7)	13.2% (14)	13.5% (14)	14.5% (48)
<b>total</b>	12	46	48	16	106	104	332
Lack of experience in the required scope of work or deliverables							
Yes	8.3% (1)	21.7% (10)	25.0% (12)	12.5% (2)	19.6% (21)	20.4% (21)	20.2% (67)
No	91.7% (11)	65.2% (30)	56.3% (27)	50.0% (8)	61.7% (66)	67.0% (69)	63.6% (211)
N/A	0.0% (0)	13.0% (6)	18.8% (9)	37.5% (6)	18.7% (20)	12.6% (13)	16.3% (54)
<b>total</b>	12	46	48	16	107	103	332
Lack of personnel							
Yes	8.3% (1)	24.4% (11)	16.7% (8)	13.3% (2)	23.4% (25)	22.3% (23)	21.2% (70)
No	83.3% (10)	64.4% (29)	68.8% (33)	46.7% (7)	58.9% (63)	64.1% (66)	60.0% (208)
N/A	8.3% (1)	11.1% (5)	14.6% (7)	40.0% (6)	17.8% (19)	13.6% (14)	15.8% (52)
<b>total</b>	12	45	48	15	107	103	330

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
Lack of equipment							
Yes	0.0% (0)	25.6% (11)	20.8% (10)	0.0% (0)	18.9% (20)	10.7% (11)	15.9% (52)
No	83.3% (10)	60.5% (26)	64.6% (31)	53.3% (8)	56.6% (60)	71.8% (74)	63.9% (209)
N/A	16.7% (2)	14.0% (6)	14.6% (7)	46.7% (7)	24.5% (26)	17.5% (18)	20.2% (66)
<b>total</b>	12	43	48	15	106	103	327
Lack of relationships with firms that you could partner/team with							
Yes	61.5% (8)	60.0% (27)	70.8% (34)	56.3% (9)	50.9% (54)	44.2% (46)	53.6% (178)
No	38.5% (5)	28.9% (13)	18.8% (9)	6.3% (1)	34.9% (37)	46.2% (48)	34.0% (113)
N/A	0.0% (0)	11.1% (5)	10.4% (5)	37.5% (6)	14.2% (15)	9.6% (10)	12.4% (41)
<b>total</b>	13	45	48	16	106	104	332
Contract was too large for your firm to take on							
Yes	38.5% (5)	36.4% (16)	43.8% (21)	26.7% (4)	39.3% (42)	35.3% (36)	37.7% (124)
No	61.5% (8)	45.5% (20)	35.4% (17)	26.7% (4)	41.1% (44)	51.0% (52)	44.1% (145)
N/A	0.0% (0)	18.2% (8)	20.8% (10)	46.7% (7)	19.6% (21)	13.7% (14)	18.2% (60)
<b>total</b>	13	44	48	15	107	102	329
Contract was too small to make it worthwhile							
Yes	0.0% (0)	24.4% (11)	6.3% (3)	12.5% (2)	19.6% (21)	15.7% (16)	16.1% (53)
No	100.0% (12)	62.2% (28)	72.9% (35)	50.0% (8)	60.7% (65)	70.6% (72)	66.7% (220)
N/A	0.0% (0)	13.3% (6)	20.8% (10)	37.5% (6)	19.6% (21)	13.7% (14)	17.3% (57)

**COLORADO DEPARTMENT OF TRANSPORTATION**  
**Statewide Transportation Disparity Study**

	Asian	Black	Hispanic	Native American	White Woman	White Male	Total
<i>total</i>	12	45	48	16	107	102	330
Unable to identify competitively priced suppliers							
Yes	0.0% (0)	30.2% (13)	18.8% (9)	12.5% (2)	11.2% (12)	12.6% (13)	14.9% (49)
No	66.7% (8)	48.8% (21)	52.1% (25)	37.5% (6)	45.8% (49)	55.3% (57)	50.5% (166)
N/A	33.3% (4)	20.9% (9)	29.2% (14)	50.0% (8)	43.0% (46)	32.0% (33)	43.6% (114)
<i>total</i>	12	43	48	16	107	103	329
Cost of buying plans for bid/proposal was too high							
Yes	8.3% (1)	33.3% (15)	27.7% (13)	12.5% (2)	19.6% (21)	7.9% (8)	18.3% (60)
No	66.7% (8)	44.4% (20)	44.7% (21)	43.8% (7)	42.1% (45)	61.4% (62)	49.7% (163)
N/A	25.0% (3)	22.2% (10)	27.7% (13)	43.8% (7)	38.3% (41)	30.7% (31)	32.0% (105)
<i>total</i>	12	45	47	16	107	101	328
CDOT contracting practices seemed unfair							
Yes	8.3% (1)	46.7% (21)	25.5% (12)	18.8% (3)	28.3% (30)	23.3% (24)	27.7% (91)
No	83.3% (10)	42.2% (19)	48.9% (23)	18.8% (3)	41.5% (44)	54.4% (56)	47.1% (155)
N/A	8.3% (1)	11.1% (5)	25.5% (12)	62.5% (10)	30.2% (32)	22.3% (23)	25.2% (83)
<i>total</i>	12	45	47	16	106	103	329
CDOT had a preferred list of vendors to the exclusion of your company							
Yes	25.0% (3)	44.4% (20)	37.5% (18)	25.0% (4)	30.1% (31)	27.0% (27)	31.8% (108)
No	58.3% (7)	35.6% (16)	35.4% (17)	25.0% (4)	35.9% (37)	51.0% (51)	40.7% (132)
N/A	16.7% (2)	20.0% (9)	27.1% (13)	50.0% (8)	34.0% (35)	22.0% (22)	27.5% (89)
<i>total</i>	12	45	48	16	103	100	324

## **CHAPTER 8.0 – FINDINGS AND RECOMMENDATIONS**



## CHAPTER 8.0 – FINDINGS AND RECOMMENDATIONS

The findings and recommendations included in this chapter are based on the analyses of the data represented in Chapters 2.0 through 7.0. In summary, the data supports the continuation of the Colorado Department of Transportation (CDOT) Disadvantaged Business Enterprise (DBE) program. The statistical and anecdotal analyses documents disparity in utilizing M/W/DBE firms in comparison to their availability and the anecdotal testimonies indicate lingering effects of discrimination in the transportation construction industry. For purposes of this report, M/W/DBE firms are all minority and women owned disadvantaged firms that are ready, capable and willing to perform work for CDOT. M/W/DBE firms are not limited to CDOT's DBE certified DBEs. In addition to the M/W/DBE recommendations, we recommend CDOT strengthen its race-neutral Emerging Small Business (ESB) program.

CDOT has improved its program for small businesses since its last report and since the conclusion date of this report. It has:

- Adopted policies and procedures to increase M/W/DBE participation;
- Improved the ESB program to provide more opportunities for small businesses;
- Broke or “unbundled” prime contracts into smaller projects that DBE firms can compete with non-DBE firms;
- Evaluated and improved the good faith efforts process in conjunction with the industry and DBEs;
- Performed extensive outreach efforts to DBEs and ESBs, specifically on large and American Recovery and Reinvestment Act (ARRA) projects;
- Revised the Unified Certification Program with the City and County of Denver and Regional Transportation District (RTD); and
- Aggressively implemented improvements to the consulting data collection and reporting process.

While the DBE program has experienced many successes, there are several significant points that should be addressed.

### **Findings:**

1. While all W/M/DBE firms are underutilized to some extent, African American firms were significantly underutilized in all areas of construction and consultant contracts;
2. Women-owned construction firms were not significantly underutilized with a disparity ratio of 91.40, while they were significantly underutilized in consulting subcontracts. (Courts have held that a disparity index of less than 80 indicates significant underutilization and that project specific DBE goals should only be used to address significant underutilization);
3. The majority of DBE consultant utilization was achieved using DBE prime consultants and not small DBE businesses;

4. Based upon the data collected, many of the problems faced by DBEs are consistent with those faced by all small businesses.

To address the findings, the following recommendations are presented.

**Recommendation 1:** CDOT should expand its E S B Program and use it as its primary method to include small businesses, including M/W/DBE and non-M/W/DBE participation on Federal Highway Administration (FHWA) funded projects. Since it will take time to draft and adopt new policies and procedures, CDOT should continue its UDBE and ESB programs until the new policies and procedures are adopted.

**Recommendation 2:** CDOT should establish race neutral ESB certification requirements that mirror the DBE certification requirements including:

- Appropriate size standards for Colorado;
- ESB goals for construction contracts;
- ESB goals for consultant contracts based on specific task orders; and
- Reservation of selected small contracts for competition among ESB firms.

**Recommendation 3:** CDOT should continue to award points for unbundling approaches on design/build projects.

**Recommendation 4:** CDOT should add a geographic area column on the DBE Directory and describe which Regions the DBE is willing to perform work. Based on the geographic area, the good faith effort identification should only apply to the DBEs that are willing to work in the work codes identified in the request and in the Region of the Project.

**Recommendation 5:** CDOT should make non-confidential components of final good faith effort determinations available on its website.

**Recommendation 6:** Monthly consultant progress reports should be reviewed by both the Project Manager and the respective Regional Civil Rights Manager to determine if the prime consulting firm is on schedule with its DBE compliance.

**Recommendation 7:** Implement one tracking system to collect and monitor all consultants and subconsultants (DBE and non-DBE) payments by task order, work code and subaccount number.



**Recommendation 8:** CDOT should review the utilization of DBE firms on a quarterly basis to ensure that no disparity exists and report to the DBE Commission Subcommittee. It should conduct a subsequent disparity study within five years of this final report.

## PROGRAM REVIEW

The DBE program is a federal program administered pursuant to 49 CFR Parts 23 and 26. The federal regulations require that the use of race- and gender-conscious measures are utilized by owners only when necessary. According to the Federal Regulations, if an agency achieves or exceeds its DBE goal for two years consecutively, it must adjust its program and utilize only race- and gender-neutral methods to achieve its annual goals until it becomes necessary to resume the use of contract goals to meet the annual overall goal. In addition to the federal review requirements, CDOT should evaluate the DBE utilization on a quarterly basis to determine if any gender/ethnicity categories of DBEs are or have become significantly underutilized, i.e., with a disparity index of less than 80. Only significantly underutilized DBEs should be counted toward contract specific goals.

**Recommendation 9:** CDOT should continue to set overall DBE goals and contract-specific UDBE goals. The recommended overall DBE goal is **13.29** percent.

## RECOMMENDED DBE GOAL

The recommended DBE Goal was determined using a two-step process as required by the federal regulations. The detailed data is reported in the previous chapters and appendices.

The following section describes the methodology used to calculate the overall DBE goal. The goals are subdivided for Construction and Consulting contracts and are presented in that order. For each Step, we have provided tables followed by a description of each column heading and subheading.

For the purposes of this report, M/W/DBE firms are defined using the same standards required by 49CFR26.5.

*Disadvantaged business enterprise or DBE means a for-profit small business concern --*

- 1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and*
- 2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.*

However, M/W/DBE is used to eliminate the confusion between **certified DBE firms** and all ready, willing and able minority and women-owned firms. The use of only certified DBE firms would underestimate the number of the M/W/DBE firms because there is not an equal method of determining non-DBE firms. In order for the availability analysis to be equally applied to both DBE and non-DBE firms, we are including M/W/DBE firms in our analysis. The use of M/W/DBE firms is a standard practice in conducting disparity studies.

## CONSTRUCTION

### STEP ONE

**Exhibits 8-1 and 8-2** are detailed tables of the calculations used to derive the Step One availability of M/W/DBE construction firms. Following each Exhibit, descriptions of each column are provided.

#### Exhibit 8-1

#### Step One M/W/DBE Availability Construction

Sub Contractor Work Code	Base Availability of Ready, Willing and Able M/W/DBE Firms			Adjustment for Overutilization		
	M/W/DBE		Total	M/W/DBE		Total
	# of Firms	% of Firms		# of Firms	% of Firms	
Asphalt (HBP)	42	0.76%	191	42	0.99%	191
Concrete Pavement Roadway	16	0.29%	58	16	0.38%	58
Construction Surveying	1	0.02%	2	1	0.02%	2
Culverts	3	0.05%	12	3	0.07%	12
Curb & Gutter, Sidewalk, Inlets	75	1.36%	387	0	0.00%	312
Drilling Holes	16	0.29%	65	16	0.38%	65
Earthwork	217	3.93%	893	0	0.00%	676
Electrical & Signal Items	24	0.43%	53	24	0.57%	53
Guard Rail	26	0.47%	85	26	0.61%	85
Landscaping	63	1.14%	310	0	0.00%	247
Minor Fencing, Chain Link, Barbed Wire	35	0.63%	101	0	0.00%	66
Miscellaneous	199	3.60%	716	0	0.00%	517
Painting (Not Pavement Marking)	6	0.11%	12	6	0.14%	12
Pavement Marking	9	0.16%	36	0	0.00%	27
Planing, Milling	9	0.16%	22	9	0.21%	22
Plumbing, Heating, Mechanical	9	0.16%	29	9	0.21%	29
Seal Coat & Asphaltic Mats	7	0.13%	39	7	0.17%	39
Seeding, Topsoil, Erosion Control	12	0.22%	49	0	0.00%	37
Signing	157	2.84%	676	0	0.00%	519
Steel	35	0.63%	130	0	0.00%	95
Storm Drain System	29	0.52%	87	0	0.00%	58
Structural Concrete	39	0.71%	91	39	0.92%	91
Testing	6	0.11%	24	0	0.00%	18
Traffic Control	33	0.60%	88	0	0.00%	55
Trucking, Hauling	200	3.62%	975	0	0.00%	775
Walls	26	0.47%	175	26	0.61%	175
Waterproofing	4	0.07%	16	0	0.00%	12
<b>Total</b>	1298	24.39%	5322	224	5.28%	4248

\*Highlighted rows indicate overutilized construction subcontract work codes

**Base Availability of M/W/DBE:** To determine the base availability estimates of ready, willing and able firms, we reported number and percentage of firms gathered by combining lists of M/W/DBE and non-M/W/DBE firms that provide the specific types of work contracted by CDOT. The base availability is adjusted for capability using data collected from the business survey of firms. Factors used to estimate a firm's capability include size of firm, number of employees, earned revenue and success rate of winning CDOT projects. [See Chapter 4, Table 4-5]. The base availability numbers are reported in Appendix L, Table L-28.

**Adjustment for Overutilized Work Codes:** A detailed analysis for construction contracts by work codes was conducted to determine areas where M/W/DBEs were overutilized. The work codes that were overutilized by M/W/DBE firms during the study period were calculated for exclusion from the Base Availability to adjust for over-concentration of M/W/DBE firms; therefore, leaving only underutilized available firms. The overutilized work codes are highlighted in yellow. The disparity analysis for construction contracts by work code is provided in Appendix F-pages F9 through F-20.

**Exhibit 8-2** represents the impact of weighting the available construction firms by the distribution of dollars expended by CDOT according to subcontract work codes. The analysis is provided for both M/W/DBE firms and non-M/W/DBE firms.

**Exhibit 8-2  
M/W/DBE Availability  
Weighted by Total Construction Dollars  
Expended by Work Code**

Sub Contractor Work Code	Weighted by Percent of Total Dollars Expended by Work Code						Final Step One
	M/W/DBE			Non-M/W/DBE		Total	M/W/DBE
	% of \$	Base # Firms	Adjusted # of Firms	Base # Firms	Adjusted # of Firms	Firms	% of Firms
	Asphalt (HBP)	16.01%	42	6.72	149	23.85	30.58
Concrete Pavement Roadway	9.31%	16	1.49	42	3.91	5.40	27.59%
Construction Surveying	1.67%	1	0.02	1	0.02	0.03	50.00%
Culverts	0.85%	3	0.03	9	0.08	0.10	25.00%
Curb & Gutter, Sidewalk, Inlets	2.72%	0	0.00	312	8.49	8.49	0.00%
Drilling Holes	2.19%	16	0.35	49	1.07	1.42	24.62%
Earthwork	5.17%	0	0.00	676	34.95	34.95	0.00%
Electrical & Signal Items	7.55%	24	1.81	29	2.19	4.00	45.28%
Guard Rail	5.54%	26	1.44	59	3.27	4.71	30.59%
Landscaping	0.98%	0	0.00	247	2.42	2.42	0.00%
Minor Fencing, Chain Link, Barbed Wire	0.81%	0	0.00	66	0.53	0.53	0.00%
Miscellaneous	8.49%	0	0.00	517	43.89	43.89	0.00%
Painting (Not Pavement Marking)	0.52%	6	0.03	6	0.03	0.06	50.00%
Pavement Marking	5.76%	0	0.00	27	1.56	1.56	0.00%
Planing, Milling	4.31%	9	0.39	13	0.56	0.95	40.91%
Plumbing, Heating, Mechanical	0.08%	9	0.01	20	0.02	0.02	31.03%
Seal Coat & Asphaltic Mats	0.53%	7	0.04	32	0.17	0.21	17.95%
Seeding, Topsoil, Erosion Control	1.46%	0	0.00	37	0.54	0.54	0.00%
Signing	1.52%	0	0.00	519	7.89	7.89	0.00%
Steel	1.51%	0	0.00	95	1.43	1.43	0.00%
Storm Drain System	0.97%	0	0.00	58	0.56	0.56	0.00%
Structural Concrete	2.59%	39	1.01	52	1.35	2.36	42.86%
Testing	0.27%	0	0.00	18	0.05	0.05	0.00%
Traffic Control	12.16%	0	0.00	55	6.69	6.69	0.00%
Trucking, Hauling	3.05%	0	0.00	775	23.64	23.64	0.00%
Walls	3.63%	26	0.94	149	5.41	6.35	14.86%
Waterproofing	0.35%	0	0.00	12	0.04	0.04	0.00%
<b>Total</b>	100.00%	224	14.28	4024	174.60	188.88	7.56%

**Percent of Dollars:** Of the total contract dollars expended by CDOT for construction, an analysis determined how many dollars were paid for each subcontract work code. The percent was calculated dividing the dollars expended for the work code divided by the total contract dollars.

The balance of **Exhibit 8-2** shows the work for both M/W/DBE and non-DBE firms using the following descriptions for each subheading.

- **Base Number of Firms:** The number of firms based on the adjustment for overutilization.
- **Adjusted Number of Firms:** The base number of firms was then multiplied by the percent of dollars expended by work code.

- **Total Number of Firms:** The total number of firms is derived by adding the adjusted number of firms for M/W/DBE and non-M/W/DBE firms.

**M/W/DBE Percent of Firms.** The final M/W/DBE percent of firms is calculated by dividing the adjusted number of M/W/DBE firms by the number of total firms.

### STEP TWO

The Step Two analysis includes an analysis of median past participation of M/W/DBE firms during the study period and weighting by dollars expended by the two business categories of construction and consultant. **Exhibit 8-3** is a summary of the analysis.

#### Exhibit 8-3 Summary of Step Two Goal Setting Process

Business Category	Step One M/W/DBE Availability	Subcontractor/ Subconsultant Median Past Participation	Step One Averaged with Median Past Participation	Distribution of Total Dollars by Business Category	Percent of M/W/DBE Firms Weighted by Dollars Spent by Business Category
Construction	7.56%	11.78%	9.67%	75.76%	7.33%

**Exhibit 8-4** is the median M/W/DBE participation from 2002 - 2007. The median participation of M/W/DBE subcontractor utilization is an adjustment recommended by the Federal Highway Administration and is calculated by identifying the number in the middle of the annual participation. The source table is located in Chapter 5, Utilization, Table 5-3.

#### Exhibit 8-4 Analysis of Median Participation of M/W/DBE Firms by Year Construction

YEAR	M/W/DBE Participation
2002	10.22
2003	10.38
2004	11.33
2005	12.23
2006	12.41
2007	12.83
<b>Median Participation</b>	<b>11.78</b>

The final step in developing the DBE goal for construction is to weight the total number of M/W/DBE firms by the percent of dollars expended for construction work by CDOT. As **Exhibit 8-5** points out, CDOT spent 75.76 percent of all federal highway related expenses for construction work.

**Exhibit 8-5**  
**Weight by Distribution of Total Dollars**

<b>Business Category</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>
Construction	\$ 1,635,918,583.93	75.76%
Consulting	\$ 523,545,932.14	24.24%
Total	\$ 2,159,464,516.07	100.00%

**CONSULTING**

**STEP ONE**

**Exhibit 8-6** is a summary of Step One in determining the availability of M/W/DBE consulting firms. The base availability is the result of the availability analysis in Chapter 4, Table 4-6. An analysis by work code was not possible due to the lack of detail data at the subconsultant level. However, the data used to form the base availability was derived from pre-qualified consultants, utilized subconsultants, certified M/W/DBE firms and firms registered to do business with CDOT in highway consulting.

**Exhibit 8-6  
 Step One M/W/DBE Availability  
 Consulting**

Business Category	Base Availability
Consulting	44.74%

**STEP TWO  
 GOAL SETTING  
 CONSULTING**

For the Step Two adjustment for consulting contracts, the same methodology was used that was used for construction. **Exhibit 8-7** is a summary of the Step Two process.

**Exhibit 8-7  
 Step Two  
 Goal Setting  
 Consulting**

Business Category	Step One M/W/DBE Availability	Subcontractor/ Subconsultant Median Past Participation	Step One Averaged with Median Past Participation	Distribution of Total Dollars by Business Category	Percent of M/W/DBE Firms Weighted by Dollars Spent by Business Category
Consulting	44.74%	4.42%	24.58%	24.24%	5.96%

**Exhibit 8-8** is the median M/W/DBE participation from 2002 - 2007. The median participation of M/W/DBE subconsultant utilization is an adjustment recommended by the Federal Highway Administration (FHWA) and is calculated by identifying the number in the middle of the annual participation. The source table is located in Chapter 6, Utilization, Table 6-3.

**Exhibit 8-8**  
**Analysis of Median M/W/DBE Firms by Year**  
**Consultants**

YEAR	M/W/DBE Participation
2002	2.72
2003	5.55
2004	6.14
2005	3.65
2006	5.19
2007	3.18
<b>Median Participation</b>	<b>4.42</b>

**Exhibit 8-9** is a duplicate of Exhibit 8-5 and is provided for the ease of the reader. Of the total dollars included in the analysis, \$1,635,918,584 or 75.76 percent of all dollars were spent on construction projects; and \$523,545,932 or 24.24 percent was spent on consultant task orders.

**Exhibit 8-9**  
**Weight by Distribution of Total Dollars**

Business Category	Total Dollars	Percent of Dollars
Construction	\$ 1,635,918,583.93	75.76%
Consulting	\$ 523,545,932.14	24.24%
Total	\$ 2,159,464,516.07	100.00%



## RECOMMENDED DBE GOAL

**Exhibit 8-10** is a summary of the recommended Overall DBE goal subdivided by Highway Program Category and Race and Gender-Neutral and Race and Gender-Conscious Goals.

### Exhibit 8-10 Summary of Recommended DBE Goal

Highway Program Weighted Categories	Total Federal Highway Dollars	% of Available M/W/DBE Firms	Estimated M/W/DBE Goal in Contract Dollars	Race-Neutral Goal	Estimated Race-Neutral Goal in Contract Dollars	Race-Conscious Goal	Estimated Race-Conscious Goal in Contract Dollars
Construction	\$ 2,159,464,516.07	7.33	\$ 158,288,749.03	5.10	\$ 110,132,690.32	2.23	\$ 48,156,058.71
Consulting	\$ 2,159,464,516.07	5.96	\$ 128,704,085.16	5.96	\$ 128,704,085.16	0	\$ -
<b>Overall Goal</b>	<b>\$ 2,159,464,516.07</b>	<b>13.29</b>	<b>\$ 286,992,834.19</b>	<b>11.06</b>	<b>\$ 238,836,775.48</b>	<b>2.23</b>	<b>\$ 48,156,058.71</b>

**Exhibits 8-11 and 8-12** are the dollars awarded to M/W/DBE prime contractors. Since prime contract awards are based on race-neutral factors, we used the dollars awarded to M/W/DBE prime contractors and consultants to establish the race-neutral goal. Subcontractor participation in CDOT construction contracts were not factored in since they were used in the adjustments in Step One.

### Exhibit 8-11 Contract Dollars and Percent of Contract Dollars Prime Construction Contractors

	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
Total Contract Dollars	\$ 83,466,389.70	\$ 1,552,452,194.23	\$ 1,635,918,583.93
Percent of Dollars	5.10%	94.90%	100.00%

### Exhibit 8-12 Contract Dollars and Percent of Contract Dollars Prime Consulting Firms

	Total M/W/DBEs	Non- M/W/DBEs	Total Dollars Awarded
Total Contract Dollars	\$ 87,584,954.18	\$ 435,960,977.96	\$ 523,545,932.14
Percent of Dollars	16.73%	83.27%	100.00%