



MGT of America, Inc.

August 18, 2014

Alaska Department of Transportation and Public Facilities



DISPARITY STUDY – FINAL REPORT

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ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
FINAL REPORT

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

In July 2012, the ADOT&PF Civil Rights Office (CRO) contracted with MGT of America, Inc., (MGT) to conduct their DBE Availability and Disparity Study Update. This is a five year study, and includes procurement activities from October 1, 2006, through September 30, 2011 (FFY2007 – FFY2011).

The Ninth Circuit in *Western States* established a two-prong test: (1) the agency must establish the presence of discrimination in its own transportation industry, and (2) the affirmative action program must be “limited to those groups that have actually suffered discrimination.”¹ A disparity study determines if there are any disparities between the utilization of minority, women, or disadvantaged business enterprises (M/W/DBEs) compared to the availability of M/W/DBEs in the marketplace who are ready, willing, and able to perform work and examines M/W/DBE utilization in the absence of goals. The focus of this summary is on utilization and disparities in subcontracting, the core of the DBE goals program.

In the following text, M/W/DBEs includes minority- and women-owned firms that are certified DBEs and that are not certified DBEs.

KEY FINDINGS

FINDING A: M/W/DBE SUBCONTRACTOR UTILIZATION

The dollar value of M/W/DBE construction subcontractor utilization on ADOT&PF projects was as follows:

EXHIBIT A
SUMMARY OF CONSTRUCTION SUBCONTRACT UTILIZATION
ALASKA DOT & PF
OCTOBER 1, 2006, THROUGH SEPTEMBER 30, 2011

BUSINESS OWNERSHIP CLASSIFICATION	FAA (\$)	FHWA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$19,041,198	\$37,095,803	\$1,535,190	\$57,672,191
Nonminority Women	\$9,618,374	\$29,203,385	\$19,900	\$38,841,659
Total M/W/DBE Firms	\$28,659,572	\$66,299,188	\$1,555,090	\$96,513,851
	(%)	(%)	(%)	(%)
Minority Business	15.64%	15.38%	22.89%	15.60%
Nonminority Women	7.90%	12.11%	0.30%	10.51%
Total M/W/DBE Firms	23.54%	27.48%	23.19%	26.11%

Other significant findings for subcontracting on ADOT&PF projects include the following:

¹ *Western States Paving*, 407 F.3d 983, 997-99 (9th Cir. 2005).

- ◆ There was substantial disparity for Asian Indian/Pacific Islander and Alaska Native Corporation construction subcontractors on ADOT&PF FHWA projects.
- ◆ Fifty-five DBE certified construction subcontractors were awarded contracts totaling \$66.9 million, 18.11 percent of the total construction subcontract dollars.
- ◆ Certified DBE professional service agreement (PSA) subconsultants won 91.0 percent of the dollars awarded to PSA subconsultants; however, this amount constituted about 1.1 percent of total PSA contract awards.

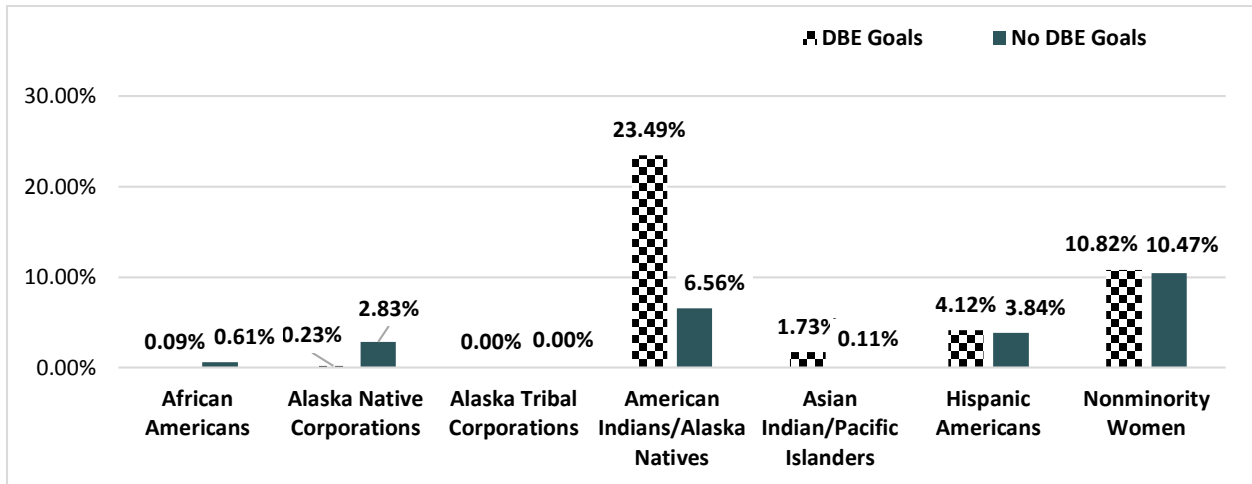
FINDING B: NON-GOAL ANALYSIS

TEA-21 DBE regulations require state departments of transportation to “meet the maximum feasible portion of [their] overall goal by using race-neutral means.”² 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.

For most of the study period ADOT&PF operated in a race neutral environment without project goals. While a large percentage of M/W/DBE survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data indicated that there was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals. For most of the M/W/DBE groups, except Alaska Natives, there was not much difference in construction subcontractor utilization between projects with and without DBE goals, as shown by **Exhibit B**. In addition, 89.5 percent of M/W/DBE construction subcontractor utilization came on projects without DBE goals. On these projects when no DBE goals were assigned M/W/DBE construction subcontractor utilization was 24.42percent.

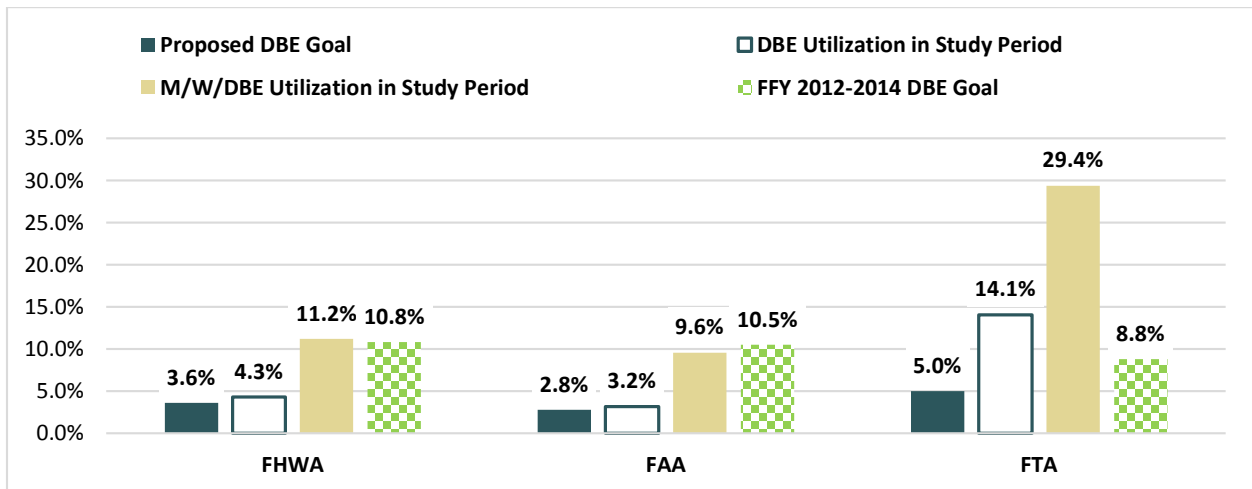
² 49 C.F.R. § 26.51(a).

FIGURE A
 COMPARISON OF CONSTRUCTION SUBCONTRACT UTILIZATION
 WITH DBE GOALS AND WITHOUT DBE GOALS
 ALASKA DOT & PF
 OCTOBER 1, 2006, THROUGH SEPTEMBER 30, 2011



KEY RECOMMENDATION: PROPOSED DBE GOALS

FIGURE B
 PROPOSED DBE GOALS, PAST DBE AND M/W/DBE OVERALL UTILIZATION FFY 2007-11
 FFY 2012-14 DBE GOALS
 FHWA, FAA, FTA



As can be seen in **Figure A** above actual M/W/DBE utilization during the study period was similar to or above DBE goals for each mode for FFY 2012-14. This result is due, in part, to the utilization of minority- and women-owned firms that graduated from the DBE program. Thus, minority- and women-owned firms are being utilized near or above ADOT&PF DBE goals, but the utilization of certified DBEs is below current ADOT&PF DBE goals. The proposed DBE goals are closer to ADOT&PF DBE goals in the FFY 2007-08 period and closer to actual DBE utilization over the study period.

CONCLUSION

Based on the level of non-goal M/W/DBE subcontractor participation, the statistical analysis in the study did not provide a strong factual predicate for across-the-board race- and gender-conscious DBE subcontractor goals, or setting a race-conscious component of the annual DBE goal. Moreover, if there are no race- and gender-conscious DBE project goals, the issue of the Central Region waiver is no longer relevant because the waiver involved omitting nonminority women from DBE project goals in the Central Region. The proposed race neutral DBE goals are outlined in **Figure B** above.

I INTRODUCTION

I: INTRODUCTION

CHAPTER SECTIONS

1. Background
2. Overview of Study Approach and Methodology
3. Report Organization

I. BACKGROUND

The U.S. Department of Transportation (U.S. DOT) requires that state and local transportation agencies which receive U.S. DOT financial assistance implement a Disadvantaged Business Enterprise (DBE) program based on regulations found in 49 C.F.R. Parts 23 and 26. The DBE program is designed to address potential discrimination against DBEs in the awarding of U.S. DOT funded contracts. There are three major U.S. DOT

operating administrations involved in the DBE program: the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). State DOTs must set DBE goals annually based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on U.S. DOT-assisted contracts. Regulations state that a disparity study can be used to provide information to help implement the DBE program.

A disparity study determines if there are any disparities between the utilization of minority, women, or disadvantaged business enterprises (M/W/DBEs) compared to the availability of M/W/DBEs in the marketplace who are ready, willing, and able to perform work.

The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) last conducted an Alaska DBE Availability and Disparity Study in 2008. This study was done in partnership with the Alaska Railroad Corporation and the Municipality of Anchorage. This was a five year study and included procurement activity from October 1, 2001 through September 30, 2006 (FFY2002 – FFY2006).

In May 2012, the ADOT&PF solicited proposals for a contractor to conduct a DBE Availability and Disparity Study Update. In July 2012, the ADOT&PF Civil Rights Office (CRO) contracted with MGT of America, Inc., (MGT) to conduct their DBE Availability and Disparity Study Update. This is a five year study, and includes procurement activities from October 1, 2006 through September 30, 2011.

According to the Scope of Services outlined in the RFP, the primary objectives of this study were to identify and characterize the following:

- ◆ The extent to which DBEs participate in the procurement of U. S. DOT federally funded highway/airports/transit contracts in general construction services.
- ◆ If DBE participation is representative of the availability of DBEs that are ready, willing, and able to participate in federally assisted ADOT&PF contracts.
- ◆ The magnitude of differences between DBE availability (based on capacity) and DBE participation on federally assisted ADOT&PF contracts.
- ◆ Whether discrimination exists. If found, identify the race, ethnicity, and gender of all groups affected (by U.S. DOT modal group and individually).

- ◆ Identify presumed disadvantaged groups that are over or underutilized for federally assisted ADOT&PF contracts based on their availability.

2. OVERVIEW OF STUDY APPROACH AND METHODOLOGY

MGT followed a work plan that allowed study team members to analyze the availability and utilization of M/W/DBEs in the procurement practices of ADOT&PF. The availability and disparity study analyzed three (3) categories of contracting opportunities in order to identify whether a statistical disparity exists, which may indicate the existence of past or present, public or private, discrimination in the appropriate local market area:

- 1) The award and procurement of construction contracts by the ADOT&PF.
- 2) The award and procurement of construction related Architecture and Engineering Land and Surveying (AELS) contracts by the ADOT&PF.
- 3) The award and procurement of construction related non-Architecture and Engineering Land and Surveying (non-AELS) contracts by the ADOT&PF

MGT's overall approach and methodology utilized research methods consistent with predominant, controlling, and relevant legal precedents. Specifically, MGT's approach addressed these precedents by breaking the analysis into prime and subcontracts, decomposing data by procurement type, examining contracts of a certain size, obtaining capacity information by surveying vendors, and conducting multiple regression analyses. After MGT deployed these methodologies and collected and analyzed data, the study team reviewed the data and preliminary findings with ADOT&PF and obtained approval on their accuracy, reliability, and validity prior to producing a draft report for review and comment.

Part of this approach entailed close communication with ADOT&PF to ensure full and complete understanding and acceptance of these methodologies before they were deployed. MGT's methodology in managing complex tasks of studies include incorporating project management as an objective; ongoing communications regarding project expectations, deliverables, and methodologies; and a work plan that accomplishes the objectives of the study.

MGT's work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize a work plan.
- ◆ Review policies, procedures, and programs.
- ◆ Conduct market area and utilization analysis.
- ◆ Determine the availability of qualified firms.
- ◆ Analyze the utilization and availability data for disparity.
- ◆ Conduct a survey of business owners.
- ◆ Collect and analyze anecdotal information.
- ◆ Prepare and present the final report for the study.

Throughout the report, MGT reviewed MBEs and WBEs regardless of DBE or any other certifications in the utilization, availability, disparity, and marketplace analyses. Therefore, these analyses pertain to any potential barriers that may be related to the race, ethnicity, and gender of business owners. If the disparity analysis were based only on certified M/W/DBEs, MGT would not be able to draw conclusions or make recommendations for program improvements for M/W/DBEs in the marketplace.

3. REPORT ORGANIZATION

In addition to this introductory chapter, this report consists of:

- CHAPTER II LEGAL ANALYSIS**
Provides an update to the ADOT&PF previous disparity study legal review.
- CHAPTER III SUMMARY OF POLICIES, PROCEDURES, AND PROGRAMS**
Provides a review of ADOT&PF's M/W/DBE policies, procedures, programs, and race- and gender-neutral efforts.
- CHAPTER IV MARKET AREA AND UTILIZATION ANALYSES**
Presents the methodology used to determine the ADOT&PF's relevant market area and statistical analysis of vendor utilization by the ADOT&PF for procurement of contracting services.
- CHAPTER V AVAILABILITY AND DISPARITY ANALYSES**
Provides a discussion of the availability of firms and the levels of disparity for vendors as well as a review of the multivariate analysis for the ADOT&PF.
- CHAPTER VI ANECDOTAL ANALYSIS**
Presents an analysis of anecdotal data collected from the survey of business owners, personal interviews, focus groups, and public hearings.
- CHAPTER VII FINDINGS AND RECOMMENDATIONS**
Provides a summary of the findings presented in previous chapters along with commendations and recommendations.
- APPENDICES** Presents additional analyses, documents used to conduct the study, and back up documentation.

The consultant team recommends reading the report in its entirety to understand the basis for the findings and conclusions presented in **Chapter VII**.

II LEGAL ANALYSIS

CHAPTER II: LEGAL ANALYSIS

CHAPTER SECTIONS

1. Introduction
2. Standards of Review for Race- and Gender-Conscious Remedial Programs
3. Evidence Necessary for Minority, Women, and Disadvantaged Business Enterprise Programs
4. Burden of Proof
5. Conclusion

I. INTRODUCTION

This chapter 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)*,¹ 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.²

Since the *Adarand* decision, seven 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 (11th 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 (10th Cir. 2003) ("*Concrete Works II*"); *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005) ("*Western States Paving*"); *H.B. Rowe v. Tippett*, 615 F.3d 233 (4th Cir. 2010); *Northern Contracting, Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7th Cir. 2007); and *AGC v. Caltrans*, 713 F.3d 1187 (9th Cir. 2013)³. These cases and other lower court cases have caused the requirements for race- and gender-conscious programs to evolve since the *Croson* decision.

In general, the requirements for race- or gender-conscious programs include:

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

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 *Ibid.*

³ *AGC v. Caltrans* dismissed the challenge to the California DBE on grounds of standing; that is, the AGC did not identify any members who had or would have suffered harm from the Caltrans DBE program. Nevertheless, the case did discuss aspects of the factual predicate justifying race conscious DBE measures.

- ◆ 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 chapter analyzes how 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 Ninth Circuit.⁴

2. STANDARDS OF REVIEW FOR RACE- AND GENDER-CONSCIOUS REMEDIAL PROGRAMS

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.⁵ The governmental entity must show that the racial classification is narrowly tailored to achieve a compelling governmental interest.⁶ 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.⁷

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.⁸ 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*,⁹ the 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.”¹⁰

Although the United States Supreme Court has not ruled directly on the type of scrutiny it would use for a Women-Owned Business Enterprise (WBE) program, the lower federal courts have applied the “intermediate” scrutiny level of review rather than the strict scrutiny applicable to race-conscious

⁴ The jurisdiction of the Ninth Circuit includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

⁵ *Croson*, 488 U.S. at 493-95.

⁶ *Id.* at 493.

⁷ *Id.* at 509.

⁸ *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Craig v. Boran*, 429 U.S. 190, 211 (1976) (Powell, J. concurring).

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

¹⁰ 961 F.2d at 932.

programs.¹¹ However, the Ninth Circuit has ruled that a gender-based remedial program is subject to intermediate scrutiny “supported by an ‘exceedingly persuasive justification’ and substantially related to the achievement of that underlying objective.”¹² 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*,¹³ 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.¹⁴

3. EVIDENCE NECESSARY FOR MINORITY, WOMEN, AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

In 1999, the USDOT revised its DBE program regulations in response to the *Adarand* Supreme Court decision which established “narrow tailoring” requirements. The District Court in the *Adarand* case had held that the prior federal regulations were not narrowly tailored for various reasons.¹⁵

In response to the modifications to the federal DBE regulations in *Adarand v. Slater*,¹⁶ 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 further 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. This created barriers to fair competition between minority and non-minority subcontractors.¹⁷ 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.¹⁸

Subsequent to the decisions of the Tenth Circuit in *Adarand* and the Eighth Circuit in the *Gross Seed and Sherbrooke Turf* holding that the revisions to the federal regulations rendered DBE programs constitutional, in *Western States Paving Co., Inc. v. Washington State Department of*

¹¹ See, e.g., *Concrete Works II*, 321 F.3d 950 (10th Cir. 2003); *Coral Construction Co. v. King County*, 941 F.2d 910 (9th 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 (11th Cir. 1997).

¹² *AGC v. California*, 713 F.3d 1187, 1195 (9th Cir. 2013). *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 (6th Cir. 1987); *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987).

¹³ 518 U.S. 515 (1996).

¹⁴ *Engineering Contractors*, 122 F.3d at 908.

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.

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

¹⁷ *Adarand v. Slater* at 1167-1168.

¹⁸ *Id.* at 1174.

*Transportation*¹⁹, 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 contracting industry exists, the *Western States Paving* decision left open the question of whether it exists in specific state and local governments of the Ninth Circuit. Therefore, it is necessary to show that discrimination in the transportation industry in the Alaska market exists. In addition, the Ninth Circuit in *Western States Paving* 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 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.”²⁰

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 flawed methodology used by the government to show that past and/or present discrimination exists, the race-neutral reasons for the disparity, or the existence of controverting data.²¹

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.” A program can be constitutional “on its face” when it is unconstitutional in all circumstances of its application. The court in *Western States Paving* found that the federal DBE regulations and their authorizing statute in TEA-21 were constitutional, and therefore, the federal DBE program is constitutional “on its face.” For example, as the court held in *Western States Paving*, the U.S. Congress could find that discrimination exists across the country and therefore, there is a compelling need for the program. The court also found that the federal DBE regulations were narrowly tailored for the national contracting industry.

On the other hand, a program can be constitutional “on its face” but unconstitutional “as applied” in a particular case. For example, while discrimination exists across the country, it may not exist in the jurisdiction that has the race- and gender-based case.

The Ninth Circuit Court of Appeals in *Western States Paving* held that the state of Washington failed to

¹⁹ 407 F.3d 983 (9th Cir. 2005).

²⁰ *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)).

²¹ See, e.g., *Concrete Works v. Denver*, 321 F.3d 950, 959 (10th Cir 2033). Citing *Wygant v. Jackson*, 476 U.S. 267, at 277-78 (“The ultimate burden remains with the [plaintiff] to demonstrate the unconstitutionality of an affirmative-action program.”).

prove that there was adequate evidence of discrimination within the state’s contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored. The Ninth Circuit in *Western States* established a two-prong test: (1) the agency must establish the presence of discrimination in its own transportation industry, and (2) the affirmative action program must be “limited to those groups that have actually suffered discrimination.”²² The Court discussed several ways in which the state’s evidence was insufficient:

- ◆ The state had not conducted a valid statistical study to establish the existence of discrimination in the highway contracting industry;
- ◆ The Washington State Department of Transportation’s (WSDOT) calculation of the capacity of DBEs to do work was flawed because it failed to take into account the effects of past race-conscious programs on current DBE participation;
- ◆ The disparity between DBE participation on contracts with and without affirmative action components did not provide any evidence of discrimination;
- ◆ A small disparity between the proportion of DBE firms in the state and the percentage of funds awarded to DBEs in race-neutral contracts (2.7% in the case of WSDOT) was entitled to little weight as evidence of discrimination, because it did not account for other factors that may affect the relative capacity of DBEs to undertake contracting work;
- ◆ This small statistical disparity was not enough, standing alone, to demonstrate the existence of discrimination. To demonstrate discrimination, a larger disparity would be required;
- ◆ WSDOT did not present any anecdotal evidence of discrimination; and
- ◆ The affidavits required by 49 CFR 26.67(a), in which DBEs certify that they are socially and economically disadvantaged, did not constitute evidence of the presence of discrimination.

Consequently, the court found that the WSDOT DBE program was unconstitutional “as applied.”²³

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); also see *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).

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 emphasize the continuing need to employ non-race-conscious methods even as

²² *Western States Paving*, 407 F.3d at 997-99. This two-prong test was re-affirmed in *AGC v. Caltrans*, 713 F.3d 1187, 1196 (9th Cir. 2013).

²³ *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)).

the need for race-conscious remedies is recognized.”²⁴ However, the Ninth Circuit in *Western States Paving* and *AGC v. Caltrans* held that states are not required “to independently meet this aspect of narrow tailoring...”²⁵ That is, states are not required to first actually implement race-neutral programs and evaluate their success prior to implementing race-conscious programs. States must consider race-neutral programs without actually implementing them.

FLEXIBILITY

Western States Paving also emphasizes the need for flexibility to show narrow 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.”²⁶ The court recognized that the TEA-21 DBE regulations explicitly prohibit the use of quotas.²⁷ 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.²⁸ 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.²⁹ TEA-21 therefore provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.³⁰

TIME LIMITATIONS FOR A RACE-CONSCIOUS PROGRAM

The *Western States Paving* Court 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 (states may terminate their programs if they meet their annual overall goal through race-neutral means for two consecutive years).³¹

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 percent quota.³² 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.”³³

²⁴ *Id.* at 994, citing *Adarand VII*, 228 F.3d at 1179.

²⁵ *AGC v. Caltrans*, No. 11-16228, at 23; *Western States Paving*, 407 F.3d at 995, 997-98.

²⁶ 539 U.S. 306.

²⁷ 49 C.F.R. § 26.43(a).

²⁸ *Id.* § 26.53(a).

²⁹ *Id.* § 26.47(a).

³⁰ *Grutter v. Bollinger*, 539 U.S. 982 (2003). See also *Sherbrooke Turf, Inc.*, 345 F.3d at 972 (“the [TEA-21] DBE program has substantial flexibility”).

³¹ See, e.g., *Sherbrooke and Gross Seed*, 345 F.3d 964 (2003).

³² *Croson*, 488 U.S. at 729-730.

³³ *Western States Paving*, 407 F.3d at 995.

The TEA-21 DBE regulations avoid this pitfall. The regulations do not establish a mandatory nationwide for minority participation in transportation contracting. The regulations clarify that the 10 percent DBE utilization goal found in the TEA-21 statute is “aspirational” only, and that states are neither required, nor authorized, to set their own DBE/MBE/WBE goals at 10 percent by simply relying upon the statute.³⁴

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.³⁵ 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 which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although goals can place a burden on non-DBE firms, 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.³⁶

EVIDENTIARY FRAMEWORK

Discriminatory Evidence - *Croson* established that a governmental entity must demonstrate identified, systemic discrimination on the basis of race.³⁷ 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 relevant market area to establish adequate evidence of discrimination.³⁸ The evidence must cover each racial group to whom a remedy would apply.³⁹

In *Northern Contracting, Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7th 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.⁴⁰ The court noted that the federal regulations gave no indication that DOT 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 (10th 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.”⁴¹

There are several ways to establish the necessary evidence to support a race- or gender-conscious

³⁴ *Western States Paving*, 407 F.3d at 994. Although the court did not note this, DBE goals may actually increase opportunities for non-DBEs by encouraging subcontracting, and the opportunity for non-DBEs subcontractors to bid, in situations where primes would otherwise self-perform.

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

³⁶ *Western States Paving*, 407 F.3d at 995.

³⁷ *Croson*, 488 U.S. at 469.

³⁸ *Croson*, 488 U.S. at 509.

³⁹ *Croson*, 488 U.S. at 506.

⁴⁰ *Id.* at 723.

⁴¹ *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.

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.⁴² The third type of evidence, which was required by the Ninth Circuit Court of Appeals in *Coral Construction*, includes 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."⁴³ 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 57 minority and female contractors.⁴⁴

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 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.⁴⁵ Courts have held that when examining capacity or readiness it is necessary to examine prime contractors and subcontractors separately.⁴⁶

The DBE firms must also be willing to provide the required services. In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*,⁴⁷ 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.⁴⁸

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.⁴⁹ 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.⁵⁰

Narrow Tailoring and Over-Inclusion - 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 stated 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

⁴² *Croson*, 488 U.S. at 509.

⁴³ *Coral Construction*, 941 F.2d at 919.

⁴⁴ *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 (9th Cir. 1991)(Anecdotal evidence *Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991)), (Anecdotal evidence included evidence that MBS 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).

⁴⁵ *Croson*, 488 U.S. at 501.

⁴⁶ *Scott v. City of Jackson*, 199 F.3d 206 (5th Cir. 1999); *Engineering Contractors v. Dade County*, 943 F.Supp. 1546 (S.D. Fla. 1996).

⁴⁷ 91 F.3d 586, 603 (3d Cir. 1996).

⁴⁸ See also, *Concrete Works*, 36 F.3d at 1529.

⁴⁹ *Concrete Works*, 6 F.3d at 1528-29.

⁵⁰ *Engineering Contractors* at 913-924.

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.”⁵¹ 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 percent of the work to minority-owned businesses and 5 percent 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.⁵² 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”.⁵³ The overly inclusive designation of benefited minority groups was a “red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.”⁵⁴ 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 percent 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). In contrast, the Caltrans DBE program litigated in *AGC v. Caltrans* had excluded Hispanic-owned firms from race-based preferences based on inadequate factual predicate evidence for the Hispanic ethnic category.⁵⁵ The exclusion of Hispanics from the race-based preferences in the California program was proper based on the lack of statistical evidence of discrimination against Hispanic contractors.

Accordingly, each of the principal minority groups benefiting from 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.

DBE Goal Setting and Capacity - 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,

⁵¹ 488 U.S. at 478, 109 S.Ct. 706 (second alteration in original).

⁵² *Id.* at 714, 109 S.Ct. 706.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *AGC v. Caltrans*, No. 11-16228, at 4.

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 percent, 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 percent 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 percent. 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 percent DBE participation rate on state-funded contracts which did not include affirmative action components. The WSDOT accordingly reasoned that it would need to achieve 5 percent of its 14 percent DBE utilization goal through race-conscious means. The USDOT approved the WSDOT's goal-setting methodology and the totality of its 2000 DBE program. 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 percent of the Washington market did not establish that they were able to perform 11.17 percent of the work.⁵⁶ 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 Constr. 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 percent of the total number of contracting firms in the state, but only get 3 percent 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 Constr. 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. In contrast, the factual predicate evidence in *AGC v. Caltrans* included information on

⁵⁶ 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."

capacity, although the case did not review this capacity evidence in any detail.⁵⁷

Anecdotal Evidence - The court also recognized that this statistical evidence produced by WSDOT was not supported by sufficient anecdotal evidence. WSDOT did have the DBE affidavits required by 49 CFR 26.67(a) attesting to the social and economic disadvantage of the DBE owners, but the Ninth Circuit ruled that those affidavits spoke to general societal discrimination and not discrimination within the transportation construction industry in the state of Washington.

In *H.B. Rowe*, evidence from a telephone survey, interviews, and focus groups was presented in the factual predicate study. The Fourth Circuit also favorably cited survey evidence of a good ol' boy network excluding MBEs from work, double standards in qualifications, primes viewing MBEs as less qualified, dropping MBEs after contract award, and firms changing their behavior when not required to use MBEs. This material was affirmed in interviews and focus groups. The Fourth Circuit also seemed to give some weight to the differences in responses between ethnic/gender groups regarding the aforementioned barriers. The Fourth Circuit concluded that, "The survey in the 2004 study exposed an informal, racially exclusive network that systematically disadvantaged minority subcontractors."⁵⁸

In *H.B. Rowe*, the plaintiff argued that these data were not verified, to which the Fourth Circuit responded, "a fact finder could very well conclude that anecdotal evidence need not—and indeed cannot—be verified because it "is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions."⁵⁹ The Fourth Circuit also commented favorably on the North Carolina Department of Transportation (NCDOT) study survey oversampling M/WBEs as long as the sample was random. The Fourth Circuit did state, citing precedent in *Maryland Troopers*, that it was problematic to infer "discrimination from reports of cronyism absent evidence of racial animus."⁶⁰

The Ninth Circuit in *AGC v. Caltrans* affirmed several aspects of the review of anecdotal material in *Rowe* in offering several points about relevant anecdotal evidence:

- ◆ Anecdotal evidence does not have to be verified;⁶¹
- ◆ The agency does not need specific incidents of discrimination;⁶²
- ◆ It is only necessary that the anecdotal evidence support the statistical evidence showing a "pervasive pattern of discrimination";⁶³ and
- ◆ Evidence of difficulties of breaking into a "good ol' boy network" is relevant anecdotal evidence of barriers faced by minority and disadvantaged firms.⁶⁴

Active or Passive Participation - *Croscon* requires that the governmental agency implementing a DBE program must have either actively or passively participated in the discrimination.⁶⁵ However, *Concrete Works* recently held that a court does not have to make an ultimate finding of discrimination before a

⁵⁷ *AGC v. Caltrans*, No. 11-16228, at 18.

⁵⁸ *H.B. Rowe*, 615 F.3d 233, at 251.

⁵⁹ *Id.* at 249 (quoting *Concrete Works*, 321 F.3d at 989).

⁶⁰ *Id.* at 251 (citing *Maryland Troopers*).

⁶¹ *AGC v. Caltrans*, No. 11-16228, at 20 (citing *H.B. Rowe*, 615 F.3d at 249 and *Concrete Works*, 321 F.3d 970, 989 (10th Cir. 2003)).

⁶² *AGC v. Caltrans*, No. 11-16228, at 18-19 (citing *AGC v. Coalition for Economic Equity*, 950 F.2d 1401, 1416, n.11 (9th Cir. 1991)).

⁶³ *AGC v. Caltrans*, No. 11-16228, at 21 (citing *AGC v. Coalition for Economic Equity*, 950 F.2d 1401, 1414 (9th Cir. 1991)).

⁶⁴ *AGC v. Caltrans*, No. 11-16228, at 20 (citing *Western States Paving*, 407 F.3d at 992).

⁶⁵ *Ibid.*

municipality may take affirmative steps to eradicate discrimination.⁶⁶ 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.⁶⁷

Post-enactment Evidence - Post-enactment evidence is evidence produced by an agency after a race-conscious program has been established. 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.⁶⁸ The Ninth Circuit required both pre-enactment and post-enactment evidence in *Coral Construction v. King County*, 941 F.2d 910 (9th 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, two district courts have rejected the use of post-enactment evidence in the evaluation of minority business programs.⁶⁹ A federal circuit court decision, covering the federal small disadvantaged business enterprise program, stated that, “For evidence to be relevant in a strict scrutiny analysis of the constitutionality of a statute, it must be proven to have been before Congress prior to enactment of the racial classification.”⁷⁰ *AGC v. Caltrans* did not directly address the issue of post-enactment evidence.

Geographic Market - The Ninth Circuit Court of Appeals clarified in *Coral Construction* that a DBE (or MBE) program must limit its geographical scope to the boundaries of the enacting jurisdiction.⁷¹

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.⁷² Another court has held that it was acceptable to study only one year.⁷³ The *Croson* case, however, indicated that it may be a fatal flaw to rely on outdated evidence.⁷⁴ 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 M/WBE) programs, compared with the evidence once the programs were implemented.⁷⁵ 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

⁶⁶ *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. Add cite. However, most courts have required active or passive participation in the discrimination.

⁶⁷ *Croson*, 488 U.S. at 492.

⁶⁸ See, e.g., *Engineering Contractors v. Dade County*, 122 F.3d 895, 911 (11th Cir. 1997); *Contractors Association v. Philadelphia*, 6 F.3d 990 (2d Cir. 1993); *Concrete Works*, 36 F.3d 1513 (10th Cir. 1994).

⁶⁹ *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).

⁷⁰ *Rothe v. U.S. Dept. of Defense*, 413 F.3d 1327, 1328 (Fed Cir 2005).

⁷¹ *Coral Construction*, 941 F.2d at 925.

⁷² *Phillips & Jordan v. Watts*, 13 F.Supp. 1308, 1315 (N.D. Fla. 1998).

⁷³ *AGCC v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401, 1414 (9th Cir. 1991).

⁷⁴ *Croson*, 488 U.S. at 499.

⁷⁵ *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*, No. C92-2938 (N.D. Cal. Sept. 181992); accord, *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003).

significant level of disparity. In *Engineering Contractors II*, the Eleventh Circuit held that disparity indices of 80 percent or greater are not considered significant.⁷⁶ This is consistent with *Contractors Association of Eastern Pennsylvania*⁷⁷ and *Concrete Works*.⁷⁸

Non-Goal Evidence - Another question that has arisen in the case law is whether evidence of a decline in M/WBE utilization following a change in, or termination of, an M/WBE program is relevant and persuasive evidence of discrimination. WSDOT had argued in *Western States Paving* that there was evidence of discrimination in the fact that DBEs received 9 percent of subcontracting dollars on state-funded projects where there were no DBE goals and 18 percent of federal funded projects where there were DBE goals. But the Ninth Circuit stated that, “even in States in which there has never been discrimination, the proportion of work that DBEs receive on contracts that lack affirmative action requirements will be lower than the share that they obtain on contracts that include such measures because minority preferences afford DBEs a competitive advantage.”⁷⁹ The Fourth Circuit in *H.B. Rowe* found that a 38 percent decline in M/WBE utilization following the suspension for the program “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors’ reduced utilization of these groups during the suspension.”⁸⁰ Similarly, the Eighth Circuit in *Sherbrooke Turf Inc. v. Minnesota Department of Transportation* and the Tenth Circuit in *Concrete Works IV* found that such a decline in M/WBE utilization was evidence that prime contractors were not willing to use M/WBEs in the absence of legal requirements.⁸¹ The evaluation of non-goal analysis was not expressly addressed in *AGC v. Caltrans*.

5. CONCLUSION

In creating and implementing a race-or gender-conscious contracting program, it is necessary to understand how the courts have interpreted the constitutional requirements. To satisfy strict scrutiny, agencies must provide a compelling interest for a race- or gender-conscious program. While gender conscious programs are subject to intermediate scrutiny in practice, there has not been a significant difference in the judicial review of race-conscious versus gender-conscious contracting programs.

The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race and gender conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys and other methods of anecdotal data collection.

If a factual predicate is found for a race- and gender conscious efforts the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding the random inclusion of groups into the program. Working with these criteria the federal courts have consistently ruled that the federal DBE regulations are narrowly tailored.

⁷⁶ *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. Disparity ratio methodology is discussed further on pages V-2 and V-3 in [Chapter V](#).

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

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

⁷⁹ *Western States Paving*, 407 F. 3d at 1000.

⁸⁰ *H.B. Rowe*, at 248.

⁸¹ *Concrete Works* at 985; *Sherbrooke Turf*, 345 F.3d 964, 973 (8th Cir. 2003).

***III SUMMARY OF POLICIES,
PROCEDURES, AND PROGRAMS***

CHAPTER III: SUMMARY OF POLICIES, PROCEDURES, AND PROGRAMS

CHAPTER SECTIONS

1. Methodology
2. Recent History of Remedial Programs
3. DBE Goals
4. DBE Reporting
5. Certification and Prequalification
6. ADOT&PF Civil Rights Office (CRO)
7. Nondiscrimination in Contracting
8. Financial Assistance Programs
9. Bonding Assistance
10. Management and Technical Assistance
11. Outreach
12. Summary

This chapter provides a summary of remedial policies and procedures used by ADOT&PF that may have shaped and impacted contracting and procurement during the study period. The focus is on construction projects and professional services agreements funded by the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). Section 1 describes the methodology used to conduct the review of contracting policies, procedures, and programs; Sections 2 through 12 present a brief summary of the programs to assist disadvantaged business enterprises (DBEs).

I. METHODOLOGY

To prepare the summary of ADOT&PF's current and past policies, procedures, and programs, a multi-pronged approach was used which included analyzing source documents and collecting data from those impacted by

policies, procedures, and programs, including ADOT&PF staff and firms seeking to do business with ADOT&PF. The methodology included the collection, review, and analysis of ADOT&PF contracting and purchasing policies currently in use.

MGT's review was supplemented by interviews and discussions with managers regarding the changes of contracting and purchasing policies during the study period and their impact on contracting and procurement. Questionnaires were administered to key ADOT&PF contracting and purchasing staff and officials to determine how existing contracting and purchasing policies have been implemented. The administration of questionnaires included interviews with ADOT&PF management and staff regarding the application of policies, discretionary use of policies, exceptions to written policies and procedures, and impact of policies on key users.

ADOT&PF regulations, policies, and procedures were reviewed and discussed with ADOT&PF personnel and program participants regarding their effect on the DBE program and any changes that were implemented during the reporting period. The overall assessment of the impact of these policies can only be made in conjunction with the statistical and anecdotal evidence contained in Chapters IV, V, and VI of this report.

To provide further context for the review and analysis, MGT collected and reviewed copies of previous studies of DBE development in the geographic region and performed a review of race- and gender-

neutral programs.¹ MGT completed nine interviews with current ADOT&PF staff and local agencies between September and December of 2012.² ADOT&PF documents collected and reviewed for this portion of the study are itemized in **Exhibit 3A**.

EXHIBIT 3A
DOCUMENTS EXAMINED DURING POLICY AND PROCEDURE REVIEW

INDEX	DESCRIPTION
Procurement Documents	
1.	Chapter 30 Alaska State Procurement Code
2.	<i>AS 36.30.115. Subcontractors For Construction Contracts</i>
3.	AS 08.18.071. Bond Required
4.	<i>AS 36.25.010. Bonds of Contractors For Public Buildings or Works</i>
5.	<i>State of Alaska, Procurement Regulations, Title 2, Chapter 12, 2/16/12</i>
6.	<i>ADOT&PF Alaska Construction Manual, effective April 15, 2012</i>
7.	Chapter 2 Small Procurements (> \$5,000 ≤ \$100,000)
8.	ADOT&PF, Professional Services Agreement (PSA) Manual, April 2012
9.	<i>Alaska Office of Management and Budget, Department of Transportation and Public Facilities FFY2014 Proposed Budget, Components Summary</i>
10.	Competitive Sealed Proposals Activity Checklist
11.	ADOT&PF, Federal Highway Administration, Alaska Division and Alaska Department of Transportation & Public Facilities, Stewardship and Oversight Agreement, September 22, 2009
DBE and SBE Documents	
12.	ADOT&PF, 2011 DBE Program, December 19, 2011
13.	ACDBE Program for Ted Stevens International Airport, 2012
14.	Request to Rescind the Alaska DOT&PF Central Region Disadvantaged Business Enterprise (DBE) Contract Goal Waiver, December 6, 2012
15.	ADOT&PF, 2012 Central Region Waiver Evaluation Revised, December 4, 2012
16.	ADOT&PF, FHWA FFY 2012-2014 DBE Goal Request, May 29, 2012
17.	The Alaska Unified Certification Program Agreement, May 19, 2003
18.	ADOT&PF, Region Disadvantaged Business Enterprise (DBE) Subcontractable Items, Form 25A-324 (8/01)

¹ Race-neutral participation occurs when contractors use a DBE firm on a project with no DBE participation requirement and when DBE participation exceeds the DBE goal. Race-conscious projects have a DBE percentage requirement.

² Mark O'Brien, Chief Contracts Officer; Krystalynn Scott, Research Analyst; Sharon Smith, Central Region Chief of Contracts; Mike Cray, Regional Compliance Officer; Debbie Howard, Transit Coordinator; Grace San Miguel Morfield, Civil Rights Office Manager; Bob Saviers, Procurement Specialist; Celeste Sozoff, Regional Compliance Officer; Corlotta Robinson, DBE Certification Officer.

INDEX	DESCRIPTION
19.	ADOT&PF, 2011 DBE Program, March 2012 Addendum, Section 120
20.	ADOT&PF, Section 120, Disadvantaged Business Enterprise (DBE) Program, 3/5/12
21.	FFY 2013-FFY 2015 ADOT&PF Disadvantaged Business Enterprise (DBE) Triennial Goal Methodology: Federal Transit Administration (FTA)
22.	ADOT&PF, Department of Transportation and Public Facilities, Civil Rights Office, Organization Charts 3-2012 & 10-2013
23.	ADOT&PF, Fostering Small Business Participation (SBE) 49 CFR 26.39, July 17, 2012
24.	Memorandum, Warren S. Whitlock, DBE Small Business Element, July 18, 2012
25.	December 14, 2012 Letter from David Miller, Letter to Martha Kenley
26.	February 25, 2013 Letter from Elizabeth Hoffman (FHWA), Letter to Dennis Good (Re Waiver)
27.	July 12, 2012 Letter from David C. Miller to Marc Luiken (concerning FFY 2012-14 DBE goal)
28.	ADOT&PF, Contact Report, Federal Aid Contracts, Form 25A-321A (1/02)
29.	ADOT&PF, Monthly Summary of Disadvantaged Business Enterprise (DBE) Participation Form 25A-336 (3/2012)
30.	DBE CUF Monitoring Report (Form 25A-298)
31.	State of Alaska Executive Branch 2010 Affirmative Action Plan
32.	State of Alaska, Office of the Governor, Administrative Order No. 76
33.	ADOT&PF, Good Faith Efforts Flow Chart (September 2012) http://www.dot.state.ak.us/cvlrts/forms/GFEFlowChart.pdf
34.	Alaska Unified Certification, Operating Methods, August 2011
35.	The Alaska Unified Certification Program Agreement, May 19, 2003
36.	ADOT&PF, Certification Actions- Applications-Denials (spreadsheet)
37.	ADOT&PF, Uniform Reports of DBE Commitments/Awards and Payments, FFY 2007-11
38.	ADOT&PF, Civil Rights Office, 50% Reimbursement Application, Revised January 2012
39.	ADOT&PF Civil Rights Office, DBE Supportive Services Scope of Work
40.	Alaska Small Business Development Center, South Central Region, Seminar Schedule (July-September 2012)
41.	<i>Transporter</i> issues (2010 to 2013)
42.	ADOT&PF, Implementation Plan for Title VI of the Civil Rights Act of 1964, 2009

2. RECENT HISTORY OF REMEDIAL PROGRAMS

Following the Ninth Circuit Court of Appeals decision in *Western States Paving v. Washington DOT*,³ ADOT&PF eliminated the race-conscious elements of its DBE goals program on January 10, 2006. In 2008, ADOT&PF participated in a disparity study that included the Municipality of Anchorage and the Alaska Railroad Corporation. The 2008 ADOT&PF disparity study found that, from October 1, 2001, through September 30, 2006:

- ◆ For federally funded prime construction contracts, 22 DBEs were awarded 45 contracts for \$80.2 million, 4.81 percent of total ADOT&PF spending on federally funded construction contracts.⁴
- ◆ For federally funded prime professional services contracts, 13 DBEs were awarded 113 contracts for \$41.0 million, 16.18 percent of total ADOT&PF spending on federally funded professional services contracts.⁵
- ◆ For construction subcontracts on federally funded contracts, 92 DBEs were awarded 735 contracts for \$95.3 million, 5.71 percent of construction subcontract dollars on federally funded contracts.⁶
- ◆ For professional services subcontracts on federally funded contracts, 32 DBEs were awarded 138 contracts for \$3.4 million, 1.37 percent of construction subcontract dollars on federally funded contracts.⁷

On April 1, 2011, ADOT&PF returned to race-conscious goals for FAA and FTA funded projects. FHWA approved a return to race-conscious project goals in June 2011.⁸ On April 1, 2011, ADOT&PF began setting goals on FHWA construction projects in the Northern and Southeast Regions. On October 1, 2011, ADOT&PF began setting goals on FHWA construction projects in the Central Region. On April 1, 2012, ADOT&PF began setting goals on professional services agreements (PSAs).

FHWA approved a waiver for the Central Region on March 30, 2011, and ADOT&PF implemented the waiver on September 15, 2011. This waiver provided that certified DBEs owned by nonminority women would be omitted from DBE contract goal setting in the Central Region on FHWA projects.⁹ The waiver did not apply to PSAs. Under the waiver, using nonminority women was counted as race-neutral utilization towards the DBE goal. On December 14, 2012, ADOT&PF asked the FHWA to remove the waiver based on its experience with the Central Region waiver and a survey of prime contractors, subcontractors, and DBEs in the fall of 2011.¹⁰ The FHWA declined to remove the waiver until after the results of this study.¹¹

³ *Western States Paving v. Washington DOT*, 407 F. 3d 983 (9th Cir. 2005).

⁴ D. Wilson, *Alaska Disparity Study*, 2008, Exhibit 5-3, at page 5-10.

⁵ D. Wilson, *Alaska Disparity Study*, 2008, Exhibit 5-4, at page 5-10.

⁶ D. Wilson, *Alaska Disparity Study*, 2008, page 5-11.

⁷ D. Wilson, *Alaska Disparity Study*, 2008, page 5-11.

⁸ Cover Letter, ADOT&PF DBE Program, December 19, 2011.

⁹ Request to Rescind the Alaska DOT&PF Central Region Disadvantaged Business Enterprise (DBE) Contract Goal Waiver, December 6, 2012.

¹⁰ December 14, 2012, Letter from David Miller to Martha Kenley, 70 out of 128 firms completed the survey. ADOT&PF, 2012 Central Region Waiver Evaluation Revised, December 4, 2012, page 7.

¹¹ February 25, 2013, Letter from Elizabeth Hoffman to Dennis Good (Re: Waiver).

3. DBE GOALS

DBE ASPIRATIONAL GOALS

Exhibit 3B presents the ADOT&PF aspirational DBE goals reported to FHWA from FFY 2007 through FFY 2012-14 for FHWA projects.¹² ADOT&PF DBE goals for FHWA, FAA, and FTA projects ranged between 4.0 percent and 13.0 percent from FFY 2007 through FFY 2012-14. The DBE goals for FHWA, FAA, and FTA projects for FFY 2012-14 are 10.82 percent, 10.50 percent, and 8.81 percent, respectively.¹³ The proposed race-conscious element of the DBE goal for FFY 2012-14 for FHWA, FAA, and FTA are 5.73 percent, 4.95 percent, and 3.10 percent, respectively.

EXHIBIT 3B
ADOT&PF FHWA, FAA, AND FTA DBE ASPIRATIONAL GOALS
FFY 2007 THROUGH FFY 2014

FFY	DBE GOAL	RACE- NEUTRAL DBE GOAL	RACE- CONSCIOUS DBE GOAL
FHWA			
2007	4.00%	4.00%	0.0%
2008	5.00%	5.00%	0.0%
2009	13.00%	5.70%	7.30%
2010	13.00%	5.70%	7.30%
2011	13.00%	5.70%	7.30%
2012-14	10.82%	5.09%	5.73%
FAA			
2007	6.50%	6.50%	0.0%
2008	6.50%	6.50%	0.0%
2009	13.00%	4.30%	8.70%
2010	13.00%	4.30%	8.70%
2011	13.00%	4.30%	8.70%
2012-14	10.50%	5.55%	4.95%
FTA			
2007	1.50%	1.50%	0.0%
2008	1.65%	1.65%	0.0%
2009	13.00%	9.20%	3.80%
2010	13.00%	9.20%	3.80%
2011	13.00%	9.20%	3.80%
2012-14	8.81%	5.71%	3.10%

Source: ADOT&PF, Uniform Reports of DBE Commitments/Awards and Payments, FFY 2007-11; ADOT&PF, FHWA FFY 2012-2014 DBE Goal Request, May 29, 2012, ADOT&PF, 2011 DBE Report, at 13.

¹² Starting in FFY 2012 DBE goals are submitted for three year periods.

¹³ The FFY 2012-14 proposed FHWA goal was approved in July 2012. July 12, 2012, Letter from David C. Miller to Marc Luiken.

In June 2011, ADOT&PF reviewed five sources for estimating step one baseline availability for DBE goal setting. The data sources reviewed were the 2007 Survey of Business Owners (SBO) from the U.S. Census Bureau, the ADOT&PF Bidder Registration List, the 2008 ADOT&PF Disparity Study, Alaska Business License data, U.S. Small Business Administration (SBA) 8(a) data, and Dun & Bradstreet data.¹⁴ The U.S. DOT required that ADOT&PF use the 2008 Disparity Study for baseline availability estimates.

DBE PROJECT GOAL SETTING

DBE Project Goal setting begins prior to advertising when ADOT&PF Project/Design Engineers issue a request for a DBE Goal from the Civil Rights Office (CRO). The ADOT&PF CRO then sets the DBE project goal by evaluating the engineers' estimates, work categories, subcontractable items, and recommended DBE goal. Each work item is evaluated for possible subcontractable items. The CRO considers the project location, available DBEs in the relevant work categories within the project's geographic region, and other important factors in the goal-setting process. DBEs must be certified in the work category the prime is using to meet the DBE goal. The DBE goal is then based on the ratio of total DBE subcontractable items and the engineer's estimated basic bid. After contract award, DBE goals are reviewed at the preconstruction conference along with the designation of the CRO Representative.¹⁵

ADOT&PF does not place DBE goals on state-funded transportation contracts. However, a 1983 Alaska Administrative Order provided that, "The commissioner [of the Department of Transportation] shall take all possible affirmative action which the commissioner determines will help (1) to overcome effects of past discrimination against minorities, women, and other classes of persons protected by AS 18.80.200, in the contracting business; and (2) to promote full and equal opportunity for business enterprises owned and controlled by minorities, women, and other classes of persons protected by AS 18.80.200, to receive public construction funds."¹⁶

There is evidence that the ADOT&PF DBE project goal setting process has had a range of goals. The 2008 Alaska Disparity Study reported that 76.3 percent of all the ADOT&PF contracts in the study, representing 38.27 percent of federal-aid contracts, did not have race-conscious DBE goals.¹⁷ Professional services contracts rarely had DBE goals.¹⁸ In the 2008 Disparity Study, goals ranged from 0 to 16.10 percent and DBE project goals were rarely above 10 percent.¹⁹ Evidence on projects without goals during the current study period is provided in [Appendix L](#) of this report.

GOOD FAITH EFFORTS REQUIREMENTS

ADOT&PF is required to have good faith efforts (GFE) provisions under the federal regulations.²⁰ After evaluation of the bids, a Notice of Intent is sent to the apparent low bidder which includes the DBE Utilization Report (Form 25A-325C) and A Request for Written DBE Commitment (Form 25A-326). The apparent low bidder has five working days to return the forms. If the apparent low bidder is unable to meet the DBE goals, the bidder must submit:

¹⁴ ADOT&PF, FHWA FFY 2012-14 DBE Goal Request, May 29, 2012, page 4.

¹⁵ *Alaska Construction Manual*, page 3-5.

¹⁶ State of Alaska, Office of the Governor, Administrative Order No. 76. *Alaska Construction Manual*, page 7-1.

¹⁷ D. Wilson, *Alaska Disparity Study*, 2008, page 5-15.

¹⁸ D. Wilson, *Alaska Disparity Study*, 2008, Exhibit 5-12, pages 5-50 through 5-60.

¹⁹ D. Wilson, *Alaska Disparity Study*, 2008, Exhibit 5-10, pages 5-39 through 5-47.

²⁰ 49 CFR Part 26, Appendix A.

- ◆ DBE Summary of Good Faith Efforts Documentation (Form 25A-332A).
- ◆ DBE Contact Reports (Form 25A-321A) and all acceptable verification documents.
- ◆ DBE Utilization (Form 25A-325C).

The ADOT&PF Contact Report for federal aid contracts asks whether the bidder: (1) identified specific items of work when asking for a quote; (2) offered assistance with bonding and insurance; (3) provided all appropriate information concerning the specific work items; (4) was presented a DBE quote that was more than 10 percent higher than the accepted quote; and (5) received a quote from a DBE which was unable to perform in some capacity.²¹

The CRO decides whether to accept the GFE documentation and proposed efforts or to award the contract to the next lowest bidder who meets the DBE goal or completes a successful GFE submission. If the apparent low bidder fails to satisfy the GFE requirements, the bidder has three days to seek an administrative reconsideration.²² For reconsideration, the bidder must provide written documentation or arguments addressing efforts to meet the DBE goal. No additional DBE good faith effort contact information may be provided.²³ If the reconsideration is denied, then the Notice of Intent to award is made to the next lowest responsive and responsible bidder that meets the DBE goals or completes a successful GFE submission.

The specific ADOT&PF GFE requirements²⁴ are as follows:

- a. **Consider all subcontractable items.** The bidder shall, at a minimum, seek DBE participation for each of the subcontractable items with an established DBE goal, as identified on Form 25A-324, before bid opening. It is the bidder's responsibility to facilitate DBE participation by making the work listed on the subcontractable items available to DBE firms. If the bidder cannot achieve the DBE Utilization Goal, then the bidder may also consider other items not listed that could be subcontracted to DBEs.
- b. **Initial DBE notification.** All DBEs listed in ADOT&PF's current DBE Directory that have a "Yes" under Required GFE Contact and "Yes" under the specific Work Area (Region) must be contacted at least seven calendar days prior to bid opening. DBEs certified to perform work items identified on Form 25A-324 must be contacted to solicit their interest. Each contact with a DBE firm will be logged on a Contact Report, Form 25A-321A. The bidder must give DBEs at least five calendar days to respond. The bidder may reject DBE quotes received after the deadline. Such a deadline for bid submission by DBEs will be consistently applied.

The only acceptable methods of initial and follow up notification are:

1. By fax with a confirmation receipt of successful transmission to the DBE's fax number listed in the DBE directory. A fax transmission without receipt of successful transmission is unsatisfactory.

²¹ ADOT&PF, Contact Report, Federal Aid Contracts, Form 25A-321A (1/02).

²² 49 CFR Part 26.53(d) provides for administrative reconsideration. ADOT&PF *Alaska Construction Manual*, effective April 15, 2012, page 3-3.

²³ ADOT&PF, 2011 DBE Program, March 2012 Addendum, Section 120-3.02, page 4-8.

²⁴ ADOT&PF, 2011 DBE Program, March 2012 Addendum, Section 120-3.02, page 3-8.

2. By email with confirmation of successful receipt by DBE's email address listed in the DBE directory. An email without confirmation of successful receipt is unsatisfactory.
 3. By U.S. Mail to DBE's address listed in the DBE directory with a return receipt required. Letters mailed without a return receipt signed by the DBE or DBE key employee are unsatisfactory. Delivery confirmation with evidence of successful delivery is an acceptable substitute for return receipt.
 4. By telephone solicitation with a record of the date and time of the telephone call made to the DBE's telephone number listed in the DBE directory. Telephone solicitation without a record of date and time is unsatisfactory.
- c. **Non-Competitive DBE Quotes.** DBE quotes more than 10 percent higher than an accepted non-DBE quote will be deemed non-competitive, provided they are for the exact same work or service.

All evidence in support of a non-competitive bid determination must be provided at the time of the GFE submittal. When a DBE quote is rejected as being non-competitive, the work must be performed by the non-DBE subcontractor whose quote was used to provide the basis of the determination. Payments received by the non-DBE subcontractor during the execution of the contract shall be consistent with the accepted quote. This does not preclude increases due to changes in documents issued by ADOT&PF.

- d. **Assistance to DBEs.** Contractors must provide DBEs with:
1. Information about bonding or insurance required by the bidder.
 2. Information about securing equipment, supplies, materials, or related assistance or services.
 3. Adequate information about the requirements of the contract regarding the specific item or work or service sought from the DBE.
- e. **Follow-up DBE notifications.** Contact the DBEs to determine if they will be bidding. For acceptable forms of notification and required documentation, see 120-3.02, subsection 1.b items 1 through 4.
- f. **Good Faith Effort Evaluation.** Subsections (a) through (e) must be completed for a GFE-based submission to be considered. Failure to perform and document actions contained in subsections (a) through (e) constitute insufficient GFE. After submitting a GFE, bidders may only clarify efforts taken before opening. No new efforts or additional DBE participation are permitted after bid opening.²⁵

Prime contractors are only required to contact DBEs in the specific work category in the specific region. On contracts with no DBE goals, bidders do not have to document their GFE. The CRO is tasked with determining whether a bidder's GFE was responsive. The 2008 Disparity Study found 98 GFE submissions on 1,223 contracts from 2000 through 2005.²⁶ The 2008 Disparity Study found that 12 of these GFE submissions were rejected by the CRO. ADOT&PF reported that they had rejected four bidders for

²⁵ ADOT&PF, 2011 DBE Program, March 2012 Addendum, Section 120. The Good Faith Efforts flow chart also states that all GFE documents must be included in the bid packet. ADOT&PF, Good Faith Efforts Flow Chart (September 2012) <http://www.dot.state.ak.us/cvlrts/forms/GFEFlowChart.pdf>.

²⁶D. Wilson, *Alaska Disparity Study*, 2008, page 3-9.

failure to satisfy GFE requirements during the current study period, October 1, 2006, through September 30, 2011.

SUBCONTRACTOR DISCLOSURE AND SUBSTITUTION

Bidders are required to disclose subcontractors within five days of identification as the apparent low bidder.²⁷ The Project Engineer cannot allow a subcontractor to perform any work without a signed Contractor Self-Certification (Form 25D-042).²⁸ Once the contract is awarded, the successful bidder must subcontract the items indicated on its Subcontractor List. Bidders are allowed to substitute subcontractors with the approval of the CRO through the Regional Construction Officer under certain conditions, including subcontractor bankruptcy, poor performance, inability to meet bonding requirements, licensing deficiencies, and state and federal affirmative action requirements.²⁹ However, under the ADOT&PF DBE program, a contractor cannot terminate a DBE subcontractor without the approval of the CRO Compliance Officer or CRO Manager in the absence of the Compliance Officer.

PROFESSIONAL SERVICES AGREEMENTS (PSA)

For small PSAs, ADOT&PF rules provide that if there is FHWA or FAA funding, at least one certified DBE (if there is a DBE reasonably available and certified for the required work) must be solicited for a proposal.³⁰ Small procurements are those greater than \$5,000 and less than or equal to \$100,000. For competitive sealed agreements, the ADOT&PF PSA Manual provides that if there is subcontractable work the procurement can provide for DBE goals.³¹

4. DBE REPORTING

In line with federal regulations, ADOT&PF tracks DBE prime and subcontractor construction spending in dollar and percentage terms.³² Contractors must submit evidence of payments to DBE subcontractors, manufacturers, and brokers/dealers on the DBE monthly summary (Form 25A-336). The CRO Research Analyst is responsible for tracking the payment and achievement of the DBE project goal for creditable Commercially Useful Functions (CUF). The Project Engineer does verify CUF by conducting a sight and see check using the CUF form.

From FFY 2007 through FFY 2011, ADOT&PF median DBE spending on FHWA projects was \$8.8 million, \$3.7 million on FAA projects, and \$0 on FTA projects (**Exhibit 3C**).

²⁷ AS 36.30.115(a). Subcontractors for Construction Contracts. *Alaska Construction Manual*, page 8-1.

²⁸ *Alaska Construction Manual*, page 8-2.

²⁹ AS 36.30.115(b), (c). Subcontractors for Construction Contracts.

³⁰ ADOT&PF, *Professional Services Agreement (PSA) Manual*, Chapter 2, Small Procurements, page 1, April 2012.

³¹ ADOT&PF, *Professional Services Agreement (PSA) Manual*, Chapter 3, Competitive Sealed Proposals, page 1, April 2012.

³² 49 CFR 26.37.

EXHIBIT 3C
ADOT&PF FHWA, FAA, AND FTA DBE SPENDING
ACTUAL PAYMENTS ON CONTRACTS
FFY 2007 THROUGH FFY 2011

FFY	DBE CONTRACTING VOLUMES	DBE PERCENTAGE UTILIZATION
FHWA		
2007	\$11,774,313	8.2%
2008	\$10,706,637	4.0%
2009	\$8,897,662	5.5%
2010	\$7,417,621	3.4%
2011	\$5,406,619	2.7%
FAA		
2007	\$2,147,231	10.1%
2008	\$6,240,996	5.0%
2009	\$3,765,512	4.5%
2010	\$17,893,827	13.5%
2011	\$1,185,799	1.4%
FTA		
2007	\$61,465	0.8%
2008	\$0	0.0%
2009	\$0	0.0%
2010	\$0	0.0%
2011	\$0	0.0%

Source: ADOT&PF, Uniform Reports of DBE Commitment/Awards and Payments, FFY 2007-FFY 2011.

5. CERTIFICATION AND PREQUALIFICATION

DBE CERTIFICATION

ADOT&PF DBE certification is handled by the CRO. While DBEs from other states can be certified in Alaska, ADOT&PF chooses not to automatically certify DBEs from other states.³³ In the case of a hearing, ADOT&PF uses a member of the Western Association of State Highway Transportation Officials (WASHTO) Subcommittee on Civil Rights to serve as the knowledgeable decision-maker for removal of DBE certification.³⁴

FHWA approved the Alaska Unified Certification Program (UCP) in 2003.³⁵ The following recipients have signed the Alaska UCP agreements:

- ◆ Akiachak Native Community

³³ ADOT&PF, 2011 DBE Program, page 21.

³⁴ ADOT&PF, 2011 DBE Program, page 17.

³⁵ The Alaska Unified Certification Program Agreement, May 19, 2003.

- ◆ Alaska Department of Transportation and Public Facilities (ADOT&PF)
- ◆ Alaska Industrial Development & Export Authority (AIDEA)
- ◆ Alaska Native Tribal Health Consortium
- ◆ Alaska Railroad Corporation
- ◆ Alyeska Pipeline Service Company
- ◆ Anchorage, Municipality of
- ◆ Center for Community, Inc. (Sitka, Alaska)
- ◆ Central Area Rural Transit System, Inc. (CARTS)
- ◆ Cook Inlet Tribal Council (CITC)
- ◆ Delta Junction
- ◆ Fairbanks, City of
- ◆ Inter Island Ferry Authority (Craig, Alaska)
- ◆ Juneau, City and Borough of
- ◆ Kenai, City of - Airport
- ◆ Ketchikan Airport
- ◆ Kodiak, City of
- ◆ Matanuska-Susitna Borough
- ◆ Matanuska-Susitna Community Transit (MASCOT)
- ◆ Native Village of Venetie Tribal Government
- ◆ Nenana, City of
- ◆ North Pole, City of
- ◆ North Slope Borough
- ◆ North Star Borough
- ◆ Palmer, City of
- ◆ Pelican, City of
- ◆ Quinhaqak Tribal Government
- ◆ Sitka Airport
- ◆ Sitka, City and Borough of
- ◆ Skagway, City of
- ◆ Soldotna, City of - Airport

The ADOT&PF DBE directory is posted on the ADOT&PF website.³⁶ The ADOT&PF online DBE directory allows for a search of firms by name, NAICS Code, work category, and location. As of March 2013, there were 236 certified DBEs, of which 183 firms (77.5 percent) had an Alaska address.³⁷ Ten certified DBEs in the 2008 Disparity Study were located outside of the state of Alaska.³⁸ The 236 DBEs is an increase of 12 firms over the 224 DBEs reported in the 2008 Disparity Study.³⁹ However, there was a decline of 31 DBEs (14.4 percent) in the DBE directory with an Alaska address.

In March 2013, the ADOT&PF DBE directory listed 151 firms (64.0 percent) as minority businesses, 114 firms (48.3 percent) as women-owned businesses, and 35 firms (14.8 percent) as owned by a minority female. The ADOT&PF DBE directory listed six of the DBEs (2.5 percent) as not owned by either a minority or a female. The 2008 Disparity Study listed two firms as owned by nonminority males.

³⁶ <http://dot.state.ak.us/cvlrts/directory.shtml>.

³⁷ There were 16 other states represented in the Alaska DBE directory; 18 DBEs were from the West Coast (Washington, Oregon, and California).

³⁸ D. Wilson, *Alaska Disparity Study*, 2008, page 3-20.

³⁹ D. Wilson, *Alaska Disparity Study*, 2008, page 3-18.

One special issue in DBE certification is Alaska Native Corporations (ANCs).⁴⁰ There are special rules exempting ANCs from size, ownership, and control rules for DBE certification; in particular, “an entity meeting criteria to be an ANC-owned firm must be certified as a DBE, even if it does not meet size, ownership, and control criteria otherwise applicable to DBEs.”⁴¹ Consequently, ANCs can be very large organizations with extensive federal contract awards. ANCs were awarded \$23.7 billion in federal contracts between 2000 and 2008.⁴² A concern was expressed in the anecdotal material in the 2008 Disparity Study that large ANCs were taking away opportunities from smaller DBEs.⁴³ ANCs are not identified separately in the DBE directory. In the federal System for Award Management (SAM), there were 90 ANC construction firms in Alaska in April 2013; of which 32 had more than \$10 million in revenue.⁴⁴

MINORITY AND WOMEN BUSINESS CERTIFICATION

There is no ADOT&PF minority/women business certification and no other state or local minority/women business certification program in Alaska. The federal SAM is the other primary source of certified minority/women business firms in Alaska. The SAM database includes government certified firms, such as 8(a) companies and self-certified firms. In April 2013, there were 822 minority/women business firms in Alaska in the SAM database, including 191 minority/women business construction firms.⁴⁵

PREQUALIFICATION

Neither subcontractor nor prime construction bidders are required to be prequalified for ADOT&PF construction projects. However, all contractors must complete a bidder’s registration form annually. As part of filing for a certificate of registration, a general contractor or subcontractor must file a \$10,000 bond with a surety; a specialty contractor must file a \$5,000 bond.⁴⁶ A cash deposit is acceptable in place of a bond.

⁴⁰ ANCs were established as part of the settlement of the Alaska Native Settlement Claims Act of 1971. 43 US 1601 *et seq.* ANCs were deemed to be economically disadvantaged for all federal procurement programs in 1992. 43 USC Sec 1626(e)(1).

⁴¹ 49 CFR Part 26 Supplementary Information; 49 CFR Part 26.73(i).

⁴² U.S. Senate Committee on Homeland Security & Government Affairs, Subcommittee on Contracting Oversight, *New Information About Contracting Preferences for Alaska Native Corporations (Part II)*, page 8. ANCs were admitted into the federal 8(a) program in 1986. ANCs received 19 percent of contracts awarded to 8(a) firms in 2008. Federal contracts dollars to ANCs increased from \$508.4 million in FFY 2002 to \$5.2 billion in FFY 2008. Congressional Research Service, *Contracting Programs for Alaska Native Corporations: Historical Development and Legal Authorities*, November 28, 2012, page 1.

⁴³ D. Wilson, *Alaska Disparity Study*, 2008, page 3-19.

⁴⁴ Data on ANCs can be located at http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm. There were 126 Native owned construction firms in the SAM database in 2013. SAM was formerly the Central Contract Registry.

⁴⁵ Of these construction firms, 116 firms had bonding capacity in excess of \$1 million in aggregate and 118 firms had revenue in excess of \$1 million. There were 55 minority/women business construction firms with aggregate bonding capacity in excess of \$10 million and 38 minority/women business construction firms with revenue in excess of \$10 million. While this data is outside of the study period, it may be relevant to calculations of potential DBE availability.

⁴⁶ AS 08.18.071. Bond Required.

6. ADOT&PF CIVIL RIGHTS OFFICE (CRO)

The ADOT&PF DBE program is managed by the CRO. All external affirmative action programs, including Equal Employment Opportunity (EEO), On the Job Training (OJT), and DBE, are delegated to the CRO.⁴⁷ The CRO is part of ADOT&PF Administration and Support. The ADOT&PF Chief Contracts Officer is the DBE Liaison Officer and Airport Concessions DBE Liaison Officer. The CRO Manager coordinates with the Chief Contract Officer on policy matters. The CRO had a budget of approximately \$1 million in FFY 2012 and an authorized budget of \$1.25 million in FFY 2013.⁴⁸ The ADOT&PF organization chart lists 11 staff, including the CRO Manager.⁴⁹ The CRO staffing covers:

- ◆ Administration and Statistical Reporting.
- ◆ Technical Support and Compliance (Contractor Compliance, Title VI Specialist).
- ◆ Alaska UCP (DBE certification and appeals).
- ◆ Support Services (OJT Programs & Support Services, DBE Support Services).

The ADOT&PF DBE plan delegates the following responsibilities to the CRO:

1. Incorporate federal and state laws and regulations to make policy recommendations to the Chief Contracts Officer and the Commissioner.
2. Conduct certification and re-certification of DBE applicants.
3. Perform internal compliance audits and manage DBE reporting systems.
4. Establish support services to assist all aspects of the DBE program and assist DBEs and prospective DBEs prior to and during their participation in the program.
5. Assist bidders, DBEs, regulatory agencies, prospective DBEs, and community organizations on DBE matters.
6. Assist ADOT&PF personnel, contractors, DBEs, and other interested parties in resolution of DBE problems.
7. Develop, maintain, and implement DBE Program Operating Methods, which are incorporated herein by reference.
8. Provide direct technical assistance to ADOT&PF personnel regarding contract language, administration, and negotiation; evaluate ADOT&PF contract specifications, guidelines, and procedures as they relate to DBE matters.
9. Implement a technical assistance plan to help DBEs improve their competitiveness in the transportation infrastructure construction industry.
10. Regularly publish a DBE directory.
11. Establish ADOT&PF's annual overall DBE goal, as well as establish individual DBE project goals for federally funded construction projects.⁵⁰

⁴⁷ *Alaska Construction Manual*, page 7-1 (citing Policy and Procedure 01.02.010).

⁴⁸ Alaska Office of Management and Budget, Department of Transportation and Public Facilities FFY2014 Proposed Budget, Components Summary, http://omb.alaska.gov/ombfiles/14_budget/Trans/Proposed/14compsummary_trans.pdf.

⁴⁹ ADOT&PF, Civil Rights Office, Organization Chart 3-2012.

⁵⁰ ADOT&PF, December 2011 DBE Program Update, page 8.

7. NONDISCRIMINATION IN CONTRACTING

Alaska statutes cover nondiscrimination in contracting. In particular, Alaska statutes provide that, “The commissioner [of state procurement] shall adopt regulations pertaining to... (16) the elimination and prevention of discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.”⁵¹ In keeping with this requirement, Alaska state regulations provide that, “[s]ource selection may not be based on discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.”⁵² Similarly, the Alaska Procurement Regulations provide that,

(a) Award of a bid may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder. A bid shall be evaluated to determine whether the bidder responds to the provisions, such as goals or financial incentives, established in the invitation to bid in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability....

*(j) An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. A proposal shall be evaluated to determine whether the offeror responds to the provisions, including goals and financial incentives, established in the request for proposals in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.*⁵³

In addition, the Alaska regulations provide for the contemplation of goals to help alleviate discrimination in contracting. In particular, the Alaska regulations provide that,

*(a) An invitation to bid must include ... (6) provisions, such as goals or financial incentives, established to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.*⁵⁴

*(e) An invitation to bid must require the bidder to submit evidence that the bidder’s subcontractor work will be allocated to meet provisions, such as goals or financial incentives, established in the bid to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.*⁵⁵

⁵¹ Alaska Stat. § 36.30.040(b).

⁵² 2 AAC 12.010 Nondiscrimination in Source Selection.

⁵³ State of Alaska, Procurement Regulations 2 AAC 12.180 (Bid Evaluation and Award).

⁵⁴ State of Alaska, Procurement Regulations 2 AAC 12.120 (a).

⁵⁵ State of Alaska, Procurement Regulations 2 AAC 12.120 (e).

Finally, the ADOT&PF states that its policy is to “[e]nsure nondiscrimination in the award and administration of USDOT assisted contracts.”⁵⁶

8. FINANCIAL ASSISTANCE PROGRAMS

ADOT&PF FINANCIAL ASSISTANCE PROGRAMS

ADOT&PF does not maintain a lending assistance program for DBEs. The U.S. DOT supports a Short Term Lending Program (STLP). The STLP provides access to working capital for DBEs and other small firms through revolving lines of credit guaranteed by the STLP. The lines of credit can be used for “transportation-related contracts.” The accounts receivables for these contracts constitute the collateral. Credit lines can reach \$750,000 and cannot exceed five years. The Denali Alaskan Credit Union has served as the participating lender in the program. There are a number of other loan programs maintained by the state of Alaska and other nonprofit organizations; some of these are discussed below.

PROMPT PAYMENT

While prompt payment is not considered lending assistance, prompt payment is an important part of the financial conditions faced by firms. In addition, it is Alaska state policy to make prompt payments to prime contractors on public works and public construction contracts.⁵⁷ Moreover, Alaska statutes provide the contract between primes and subcontractors contain a clause requiring that,

*the prime contractor to pay: (1) the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid; (2) the subcontractor all retainage due under the subcontract within eight working days after final payment is received from the state or political subdivision or after the notice period under AS 36.25.020 (b) expires, whichever is later.*⁵⁸

The Alaska prompt payment statute allows for interest on the amounts not paid. Prompt payment is also required under the federal DBE regulations. The federal regulations provide for prompt payment of retainage within 30 days of satisfactory completion by the subcontractor.

LOAN PROGRAMS

The **U.S. Small Business Administration (SBA)** maintains the 504 Loan Program and the 7(a) Loan Guarantee Program. The SBA’s Community Express program targets firms in low- and moderate-income neighborhoods for loans up to \$250,000. The program provides loan guarantees that follow the SBA 7(a) program.

The **Alaska Division of Economic Development** has provided a Micro Loan Fund for secured loans up to \$35,000 for one individual over six years.⁵⁹ The loans can be used for working capital, equipment, construction, or other commercial purposes for Alaska businesses.

⁵⁶ADOT&PF, 2011 DBE Program.

⁵⁷AS 36.90.200(a), (b).

⁵⁸AS 36.90.210(a)(1),(2).

⁵⁹<http://www.commerce.state.ak.us/ded/fin/microloan.cfml>.

The **Kenai Peninsula Economic Development District** has provided a Revolving Loan Fund for loans between \$5,000 and \$50,000, and a Micro Loan Fund for loans between \$1,000 and \$25,000.⁶⁰

9. BONDING ASSISTANCE

The state of Alaska requires performance bonds and payment bonds on contracts for public buildings or works exceeding \$100,000.⁶¹ At present, ADOT&PF does not maintain a direct bonding assistance program. As mentioned earlier the U.S. DOT STLP does have a bond component. ADOT&PF has held bonding workshops, including a two day workshop in Anchorage in December 2012 with the U.S. DOT, the Surety & Fidelity Association of America, Associated General contractors (AGC), FAA, Granite Construction, and the Northwest Small Business Transportation Resource Center on how firms can become bond ready. ADOT&PF has also listed bonding companies in the CRO quarterly online newsletter, the *Transporter*.

10. MANAGEMENT AND TECHNICAL ASSISTANCE

ADOT&PF MANAGEMENT AND TECHNICAL ASSISTANCE

The ADOT&PF CRO manages and employs supportive services for DBE firms participating in FHWA funded contracts. ADOT&PF has provided training as well as technical assistance referrals. ADOT&PF race-neutral technical assistance efforts include:

- ◆ Subsidies for training, workshops, professional assistance, professional memberships, software, and other means for facilitating DBEs working on FHWA projects. DBEs have been reimbursed up to 50 percent of the costs. The reimbursement limit is \$1,000 per DBE firm in a calendar year.
- ◆ The electronic transmission of project plans.
- ◆ The Map to Success Specialized Assistance Program which provides one-to-one consultation with DBEs. In the Map to Success program, DBEs meet with counselors, primarily from the Small Business Development Center (SBDC), who provide an analysis of their business infrastructure to identify strengths and weaknesses. This analysis is supplemented with financial and technical support.
- ◆ The “Tools in the Toolbox” workshops which cover the introduction to ADOT&PF procurement, bonding, introduction to government contracting, and contract law.
- ◆ Collaboration with other management and technical assistance providers in Alaska, particularly the Procurement Technical Assistance Center (PTAC), the SBDC, and the Minority Business Development Agency Center (MBDC). Other PTAC, SBDC, and MBDC business development efforts are discussed below.

⁶⁰ <http://www.kpedd.org/>.

⁶¹ AS 36.25.010. Bonds of Contractors for Public Buildings or Works.

OTHER BUSINESS DEVELOPMENT ASSISTANCE PROGRAMS

A number of business organizations and local centers also support business development in ADOT&PF and the state of Alaska.

Procurement Technical Assistance Center. The national PTAC was started in 1985 to assist businesses selling to the U.S. Department of Defense (DOD). PTAC assists with market research, business code identification, registration website, bid matching, specifications, and federal acquisition regulations. PTAC also sponsors workshops on government contracting, contract administration, bonding, and General Services Administration (GSA) proposals. PTAC has three offices in Alaska (Anchorage, Fairbanks, and Juneau). The Alaska PTAC was established in 1986. The Alaska PTAC has held regular seminars on Alaska government contracting.

Small Business Development Centers. The Alaska SBDC was started in 1986 to assist small businesses in the areas of start-up, expansion, organizational structure, and management. The SBDC Network program provides publications and free counseling primarily through a network of six SBDCs. The Alaska SBDC is funded by the U.S. SBA, the state of Alaska, partner municipal governments, and other sponsors throughout the state.⁶² SBDC workshops have covered government contracting, commercial leases, credit, and social media, amongst other topics. SBDC workshops are held in Anchorage, Bethel, Fairbanks, Juneau, Ketchikan, Soldotna, and Wasilla. This statewide SBDC program is hosted by the University of Alaska. DBEs are reimbursed 90 percent of the cost of SBDC business-related classes. DBEs must be actively pursuing ADOT&PF FHWA projects or be in the first year of certification to qualify for reimbursement of the SBDC classes.

Minority Business Development Center. The Alaska MBDC is operated by the Native American Contractors Association and is located in Anchorage. The Alaska MBDC helps ANCs, tribal enterprises, and other minority-owned businesses to access contracts, markets, and capital.

II. OUTREACH

The major outreach of the ADOT&PF has been hosting an annual statewide DBE conference. This annual conference offers business development information such as bonding, tax strategies, financing for growth, and ADOT&PF procurement updates. The conference is free for certified DBE attendees and SBEs. The annual conference has functioned as a point of contact between ADOT&PF and potential DBEs.

The 2013 conference was sponsored by the ADOT&PF CRO, in association with AGC, PTAC, and the Alaska MBDC. Over the reporting period, participants have included the SBA, City of Anchorage, SBDC, Office of Small and Disadvantaged Business Utilization (OSDBU), YMCA Women's Fund, University of Alaska Corporate Program, Denali Alaska Credit Union, U.S. Department of Labor, Schroeder Consulting, Alyeska Pipeline Service Company, Alaska Railroad, and the U.S. DOT. Workshops topics have covered business law, negotiations, contract law, project management, and executive leadership.

⁶² Municipal SBDC partners include: Municipality of Anchorage, Matanuska-Susitna Borough, Homer Chamber of Commerce, City of Homer, City of Seward, Kenai Peninsula Borough, and City & Borough of Juneau.

ADOT&PF's other DBE outreach efforts have included:

- ◆ Conducting annual surveys of DBEs.
- ◆ Planning pre-bid conferences.
- ◆ Publishing the quarterly newsletter, *Transporter*, which includes notification of forthcoming projects.
- ◆ Maintaining the ADOT&PF website, which contains extensive information on DBE certification, news, DBE program documents, resource documents, resource links, vendor outreach, bidder registration forms, supportive services, SBE program, contracts, DBE goals, DBE utilization, procurement manuals, GFE forms, and ADOT&PF contracting information.
- ◆ Organizing "Future Connections," DBE networking meetings with prime contractors.
- ◆ Sponsoring the Regional Directors Brown Bag Lunch Series which introduces DBEs to regional directors and informs regional staff of current DBE issues.
- ◆ Coordinating DBE Informational meetings discussing legal, policy, and procedural changes throughout Alaska through the CRO Supportive Services Coordinator.
- ◆ Publishing an online DBE directory (discussed above on page III-11).

12. SUMMARY

The ADOT&PF DBE program is long-established. In response to the evolving case law and evidence before it, the ADOT&PF DBE program suspended and then reestablished race-conscious DBE project goals for FHWA, FAA, and FTA projects. Overall, DBE aspirational goals ranged from 4 percent to 13 percent during the study period. ADOT&PF has detailed written procedures and forms for DBE project goal setting and good faith efforts that are consistent with federal regulations. There were limited DBE policy and procedures for PSAs during the study period.

ADOT&PF maintains and monitors DBE certification and posts its DBE directory on the ADOT&PF website. The number of certified DBEs in the ADOT&PF directory has remained fairly stable since the 2008 Disparity Study. The one unique certification issue is Alaska Native Corporations, which can be fairly large relative to other DBE firms.

The ADOT&PF race-neutral efforts during the study period included nondiscrimination rules, extensive outreach, and supportive services in conjunction with several management and technical assistance partners. The annual DBE conferences have been the focal point for outreach. ADOT&PF does not provide direct lending or bonding assistance, although there are federal sources of such business development aid.

***IV MARKET AREA AND UTILIZATION
ANALYSES***

CHAPTER IV: MARKET AREA AND UTILIZATION ANALYSES

CHAPTER SECTIONS

1. Chapter Definitions
2. Data Collection and Management
3. Market Area Analysis
4. Utilization Analysis
5. Non-Goal Analysis
6. Conclusion

Chapter IV presents the results of MGT's market area and utilization analyses of firms used on ADOT&PF prime contracts and subcontracts for construction, AELS, and non-AELS projects awarded between October 1, 2006, and September 30, 2011 (FFY2007-FFY2011). The analyses were based on projects that were funded by the following United States Department of Transportation (U.S. DOT) modal administrations: the FHWA, the FAA, and the FTA.

The following section, **Chapter Definitions**, presents the definitions to key terms that are used in this chapter.

I. CHAPTER DEFINITIONS

Business Ownership Classification. To understand the analyses presented in this study, it is important to define and understand the differences between M/W/DBE and certified DBE firms. The following section provides the study definitions for M/W/DBE, certified DBE, non-M/W/DBE, and non-DBE firms.

- ♦ **M/W/DBE Firms.** For the purposes of this study, M/W/DBE firms are firms owned by minorities or women regardless of DBE certification status. Therefore, M/W/DBE firms include all identified minorities- and women-owned firms (non-DBE certified and DBE certified). MGT used this approach in analyzing the utilization and availability of firms and to review disparities, if any. Furthermore, courts have accepted disparity studies based on race, ethnicity, and gender of the business owner as opposed to DBE certification status.
 - M/W/DBE firms were defined as firms that are at least 51 percent owned or controlled by members of the following groups:
 - **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
 - **American Indians/Alaska Natives:** U.S. citizens or lawfully admitted permanent residents who have origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment. This category includes people who indicate their race(s) as "American Indian or Alaska Native" or report an enrolled or principal tribe, such as Navajo, Blackfeet, Inupiat, Yup'ik, Central American Indian groups, or South American Indian groups.
 - **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.

- **Asian Indian/Pacific Islanders:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- **Alaska Native Corporations (ANCs):** The following special rules apply to the certification of firms related to ANCs in accordance to 49 CFR Part 26.73(i) of Subpart D:
 - (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
 - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
 - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority if both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
 - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
- **Alaska Tribal Corporations:** The following rules apply to Tribal Corporations in accordance to 49 CFR Part 26.5:
 - Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.
 - Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.
- **Nonminority Woman (Female):** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white woman.

Minority women- and male-owned firms were classified and assigned to their corresponding minority groups. For example, a Hispanic American woman- or Hispanic American male-owned firm was assigned to the Hispanic American-owned firm minority group.
- ◆ **Certified DBE Firms.** Certified DBE firms are businesses that were certified by ADOT&PF’s Civil Rights Office (CRO). This means that the certified DBE firms met the eligibility criteria stated in 49 CFR Part 26, which includes:
 - Business status, including size.
 - Social and economic disadvantage.
 - Business ownership classification.

- Independence.
- Management and control.

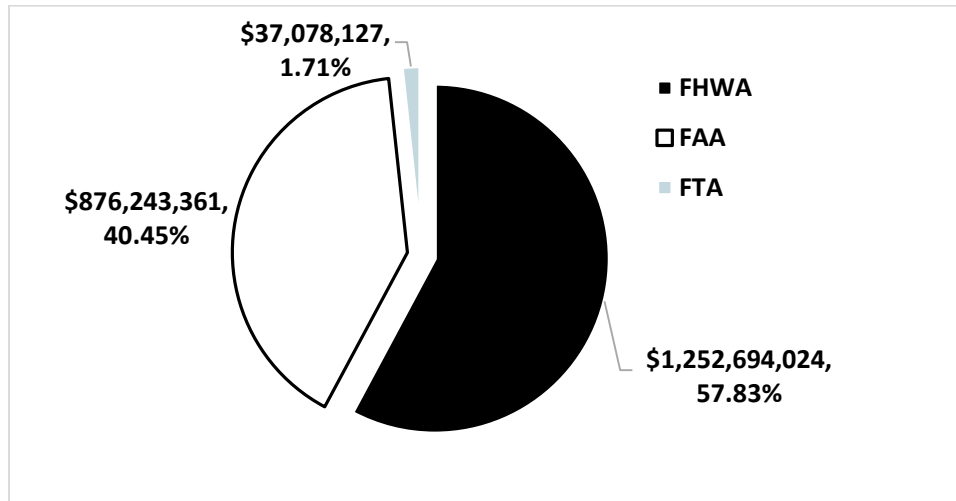
Since the Federal DBE Program requires ADOT&PF to track the utilization of certified DBE firms, MGT staff also conducted separate utilization analyses on certified DBE firms. However, it should be noted that MGT does not conduct availability or disparity analyses separately for certified DBE firms and, therefore, is not presented in this study. MGT proposed annual DBE goals for ADOT&PF by transportation mode for the upcoming period. The methodology for calculating annual DBE goals is presented in [Appendix M](#).

- ◆ **Non-M/W/DBE Firms.** Firms that were identified as nonminority male or majority-owned were classified as non-M/W/DBE firms. If there was no indication of business ownership, these firms were also classified as non-M/W/DBE firms.
- ◆ **Non-DBE Certified Firms.** When MGT examined the utilization of certified DBE firms, firms that were identified as not being certified as a DBE were classified as non-DBE certified firms.

Funding Modals. Alaska is a multi-modal state with ADOT&PF funded transportation provided through highways, airports, public transit, passenger/vehicle ferries, and rail. The types of federally-assisted transportation projects analyzed in this study were based on the three U.S. DOT modal administrations: the FHWA, the FAA, and the FTA. The analyses focused on these modal administrations, since the federal government requires state and local agencies to implement a Federal DBE Program if they receive U.S. DOT funds for transportation projects from these modal administrations.

[Exhibit 4A](#) shows the total combined dollars awarded for construction, AELS, and non-AELS projects by the three funding modals for the study period. The darker slice shown in [Exhibit 4A](#) shows that 57.8 percent of the dollars awarded during the study period were based on projects that received FHWA funding. Since much of the funding came from the FHWA, [Chapter IV](#) and [Chapter V](#) (Availability and Disparity Analyses) presents the analyses based on the three funding modals combined, as well as separate analyses on FHWA-funded projects. Corresponding analyses for FAA- and FTA-funded projects are shown in [Appendix A](#) and are separately referenced for each set of applicable analyses.

EXHIBIT 4A
AWARD DOLLARS BY U.S. DOT FUNDING MODALS



Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.
Note: The award dollars presented in this exhibit are based on the overall market area.

Market Area Methodology. In order to establish the appropriate geographic boundaries for the study’s analyses, an overall market area was established. The geographic units (such as boroughs or states) are based on the following considerations: 1) the courts have accepted the use of standard geographic units in conducting equal employment opportunity and disparity studies; 2) geographic units are externally determined, so there are no subjective determinations; and 3) U.S. Census and other federal agencies routinely collect data by geographic unit. The following presents the methodology used to determine the overall market area and relevant market area.

- ◆ **Overall Market Area Analyses.** To determine the market area and to establish the extent, to which ADOT&PF utilized firms, MGT staff reviewed the geographic location by using MGT’s Zone Improvement Plan (ZIP) Code Database of each firm conducting business with ADOT&PF during the study period. Once the firms’ geographic locations were identified, all boroughs (for firms located in the state of Alaska) and counties (for firms located outside of the state of Alaska) where dollars were awarded were analyzed and referred to the overall market area for each business category. The overall market analyses presents the results based on firms located inside the state of Alaska and outside the state of Alaska. The overall market area results by business category (based on all three funding modals) are presented in **Section 3** of this chapter.
- ◆ **Relevant Market Area Analyses.** Once the overall market was established, the relevant market area was determined for each of the business categories. The firm’s geographic location that received the most dollars, all of which totaled at least 75 percent¹ of the overall market area, were identified. The relevant market area was determined to be the state of Alaska and thus the analyses presented in this report, such as utilization, availability, anecdotal, and disparity were

¹ MGT uses the “75 percent rule” to determine the relevant market area. This rule is generally accepted in antitrust cases. In another relevant case, *James C. Jones v. New York County Human Resources Administration*, 528 F.2d 696 (.2d Cir. 1976), the court accepted less than 100 percent of the data when it was reasonable to assume that the missing data would not significantly change the results of the analysis.

based on the state of Alaska. The relevant market analyses is presented in **Section III** of this chapter.

- ◆ **Threshold Analyses.** MGT staff also conducted threshold analyses on the utilization of M/W/DBE and DBE certified firms. The threshold analyses examined the size of prime contracts and subcontracts awarded to firms. The results from these detailed analyses are presented in **Appendix A, Exhibits A-35 to A-40.**

Study Period. MGT analyzed U.S. DOT-funded construction, AELS, and non-AELS projects awarded between October 1, 2006, and September 30, 2011 (FFY2007-FFY2011).

2. DATA COLLECTION AND MANAGEMENT

MGT conducted data assessment interviews with key ADOT&PF staff knowledgeable about the prime contract and subcontract data in order to identify the most appropriate data sources to use for the study. Based on the data assessment interviews and follow-up discussions with ADOT&PF staff, it was agreed that in order to collect the most comprehensive sets of data, electronic data was extracted from ADOT&PF’s BizTrak data management system, as well as ADOT&PF headquarters procurement system. Next, MGT staff compiled and reconciled the sets of data in order to address potential data gaps, such as projects awarded by regions that were not maintained in BizTrak. Once the data gaps were addressed, MGT staff developed a master and compiled set of data, which hereafter is referred to as the Master Contract Database. MGT staff submitted the Master Contract Database to ADOT&PF staff for review and feedback. As part of the review process, ADOT&PF CRO staff distributed the data to the ADOT&PF staff located in the three ADOT&PF regions. MGT staff incorporated ADOT&PF staff feedback, and finalized the Master Contract Database.

3. MARKET AREA ANALYSIS

As mentioned in the chapter definition section, the study’s relevant market area is defined as the geographic location which accounts for at least 75 percent of the overall award dollars for each business category.

Exhibit 4B presents the market area analyses for each business category based on the three funding modals analyzed in this study. The shaded portion in **Exhibit 4B** presents the study’s relevant market area for ADOT&PF, which is the state of Alaska. About 91.1 percent of the construction award dollars went to firms located in the state of Alaska. As far as AELS and non-AELS, 86.1 percent and 94.4 percent went to firms located in the state of Alaska, respectively.

EXHIBIT 4B
MARKET AREA ANALYSIS
FUNDING MODALS COMBINED: FHWA, FAA, FTA

LOCATION OF FIRMS	CONSTRUCTION		AELS		NON-AELS	
	\$	Percent	\$	Percent	\$	Percent
Inside Alaska	\$1,896,000,777	91.12%	\$45,575,703	86.08%	\$30,452,947	94.42%
Outside Alaska	\$184,818,458	8.88%	\$7,367,377	13.92%	\$1,800,250	5.58%
TOTAL	\$2,080,819,235	100.00%	\$52,943,080	100.00%	\$32,253,197	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4C presents the market area analysis for FHWA-funded projects awarded by ADOT&PF. The shaded portion presents the study’s relevant market area and shows that 89.4 percent of FHWA-funded construction projects were awarded to firms located in the state of Alaska. As far as FHWA-funded AELS and non-AELS projects, 85.1 percent and 92.4 percent went to firms located in the state of Alaska, respectively.

EXHIBIT 4C
MARKET AREA ANALYSIS
FUNDING MODAL: FHWA

LOCATION OF FIRMS	CONSTRUCTION		AELS		NON-AELS	
	\$	Percent	\$	Percent	\$	Percent
Inside Alaska	\$1,085,203,528	89.42%	\$19,081,745	85.12%	\$15,396,618	92.37%
Outside Alaska	\$128,403,368	10.58%	\$3,336,129	14.88%	\$1,272,636	7.63%
TOTAL	\$1,213,606,896	100.00%	\$22,417,874	100.00%	\$16,669,254	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: Refer to **Appendix A, Exhibits A-1 and A-2** for the corresponding results for FAA- and FTA-funded projects.

4. UTILIZATION ANALYSIS

As mentioned in the **Section I, Chapter Definitions**, the utilization analyses are based on the relevant market area, which was determined to be the state of Alaska. The subsequent analyses presents MGT’s utilization analyses of firms on construction, AELS, and non-AELS projects awarded by ADOT&PF during the study period.

The analysis of subcontracting is presented first, since in order to establish M/W/DBE subcontracting goals there must be a factual basis to establish those goals.

Similar to the market area analyses, MGT first conducted the utilization analyses based on the three funding modals combined. **Exhibit 4D** presents the total subcontract dollars awarded by business category analyzed for the study. Since much of the subcontract award dollars were in construction (99.8%), the results presented in this chapter focus on the construction subcontractor analyses.

EXHIBIT 4D
SUBCONTRACT AWARD DOLLARS BY BUSINESS CATEGORY
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS CATEGORY	SUBCONTRACT AWARD	
	\$	Percent
Construction	\$369,684,757	99.75%
AELS	\$111,562	0.03%
Non-AELS	\$820,818	0.22%
TOTAL	\$370,617,137	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4E presents the results of the subcontractor utilization on construction projects (based on the three funding modals combined) by ADOT&PF region for each M/W/DBE group.

Statewide, M/W/DBE firms received 26.1 percent of the construction subcontract award dollars. The utilization of nonminority women-owned firms (10.5%) was higher than any other M/W/DBE group. Among minority-owned firms, the utilization of American Indian/Alaska Native- (8.3%) and Hispanic American-owned² firms (3.9%) was higher than other minority group. In terms of percentage of construction subcontract award dollars and region, the Southeast Region (28.4%) was higher than any other region followed by the Central Region (28.3%) and Northern Region (22.4%). However, based on construction subcontract award dollars and region, the Central Region (\$51.5 million) was higher followed by the Northern Region (close to \$31 million) and the Southeast Region (\$13.9 million).

Exhibit 4E also shows that MGT analyzed the utilization of DBE certified firms separately. Statewide, DBE certified firms received \$66.9 million of the subcontract dollars awarded (18.1%) during the study period. In terms of percentage of construction subcontract award dollars and region, the utilization of DBE certified firms was also higher in the Southeast Region (23.7%) followed by the Central Region (19.7%) and Northern Region (14%). The corresponding subcontract results for the utilization of firms on AELS and non-AELS projects by region are presented separately in **Appendix A, Exhibit A-3** and **Exhibit A-4**.

EXHIBIT 4E
UTILIZATION ANALYSIS OF CONSTRUCTION SUBCONTRACTORS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$2,048,256	1.12%	\$0	0.00%	\$0	0.00%	\$2,048,256	0.55%
Alaska Native Corporations	\$8,268,580	4.54%	\$1,181,873	0.85%	\$0	0.00%	\$9,450,453	2.56%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$13,263,383	7.28%	\$8,210,422	5.94%	\$9,343,193	18.99%	\$30,816,998	8.34%
Asian Indian/Pacific Islanders	\$17,142	0.01%	\$0	0.00%	\$1,020,922	2.08%	\$1,038,064	0.28%
Hispanic Americans	\$7,369,593	4.05%	\$6,948,827	5.02%	\$0	0.00%	\$14,318,420	3.87%
Nonminority Women	\$20,558,437	11.29%	\$14,656,577	10.60%	\$3,626,645	7.37%	\$38,841,659	10.51%
Total M/W/DBE Firms	\$51,525,392	28.29%	\$30,997,699	22.41%	\$13,990,760	28.44%	\$96,513,851	26.11%
Non-M/W/DBE Firms	\$130,633,401	71.71%	\$107,327,718	77.59%	\$35,209,788	71.56%	\$273,170,907	73.89%
TOTAL	\$182,158,793	100.00%	\$138,325,417	100.00%	\$49,200,547	100.00%	\$369,684,757	100.00%
DBE Certified Firms								
African Americans	\$2,048,256	1.12%	\$0	0.00%	\$0	0.00%	\$2,048,256	0.55%
Alaska Native Corporations	\$88,630	0.05%	\$947,919	0.69%	\$0	0.00%	\$1,036,549	0.28%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$12,215,970	6.71%	\$3,231,244	2.34%	\$9,343,193	18.99%	\$24,790,407	6.71%
Asian Indian/Pacific Islanders	\$17,142	0.01%	\$0	0.00%	\$1,020,922	2.08%	\$1,038,064	0.28%
Hispanic Americans	\$6,011,193	3.30%	\$5,160,633	3.73%	\$0	0.00%	\$11,171,825	3.02%
Nonminority Women	\$15,517,360	8.52%	\$10,043,792	7.26%	\$1,293,056	2.63%	\$26,854,208	7.26%
Total DBE Certified Firms	\$35,898,551	19.71%	\$19,383,587	14.01%	\$11,657,171	23.69%	\$66,939,310	18.11%
Non-DBE Certified Firms	\$146,260,242	80.29%	\$118,941,829	85.99%	\$37,543,376	76.31%	\$302,745,448	81.89%
TOTAL	\$182,158,793	100.00%	\$138,325,417	100.00%	\$49,200,547	100.00%	\$369,684,757	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: Refer to **Appendix A** for the corresponding utilization analysis of AELS and non-AELS subcontracts. **Exhibit A-3** and **Exhibit A-4** presents the separate utilization analysis of AELS and non-AELS subcontracts by region (based on all three funding modals).

² Of the \$14.3 million that was awarded to Hispanic American-owned firms construction projects (all three funding modals), \$11.6 million went to two Hispanic American-owned firms, one of the firms is no longer in business and the other firm has since been acquired by a non-DBE certified firm.

M/W/DBE utilization for each year of the study period was also analyzed. **Exhibit 4F** shows that in terms of percentage of construction subcontract award dollars by year, M/W/DBE utilization was higher in FFY2011 (32.7%) than any other year in the study period followed by FFY2009 (26.1%) and FFY2010 (25.2%). In terms of construction subcontract award dollars, M/W/DBE utilization was also higher in FFY2011 (\$25.7 million) followed by FFY2007 (\$18.9million) and FFY2008 (\$18.4 million). The utilization of DBE certified firms fluctuated between each year of the study period. In terms of percentage of construction subcontract award dollars by year, the utilization of DBE certified firms was also higher in FFY2011 (28.2%) than any other year of the study. The utilization of DBE certified firms was the lowest in FFY2008 (11.2%). The corresponding subcontract results for the utilization of firms on AELS and non-AELS projects by federal fiscal year are presented separately in **Appendix A, Exhibit A-5** and **Exhibit A-6**.

EXHIBIT 4F
UTILIZATION ANALYSIS OF CONSTRUCTION SUBCONTRACTORS BY FEDERAL FISCAL YEAR
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$220,750	0.28%	\$121,911	0.19%	\$1,705,595	2.62%	\$0	0.00%	\$2,048,256	0.55%
Alaska Native Corporations	\$1,405,513	1.71%	\$5,273,221	6.71%	\$528,701	0.81%	\$619,018	0.95%	\$1,624,000	2.07%	\$9,450,453	2.56%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$4,351,185	5.31%	\$5,282,368	6.72%	\$9,270,937	14.17%	\$4,214,241	6.47%	\$7,698,267	9.81%	\$30,816,998	8.34%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$382,014	0.59%	\$656,050	0.84%	\$1,038,064	0.28%
Hispanic Americans	\$5,181,599	6.32%	\$1,081,814	1.38%	\$888,891	1.36%	\$3,941,483	6.05%	\$3,224,634	4.11%	\$14,318,420	3.87%
Nonminority Women	\$7,943,758	9.69%	\$6,544,606	8.33%	\$6,288,207	9.61%	\$5,567,548	8.55%	\$12,497,540	15.92%	\$38,841,659	10.51%
Total M/W/DBE Firms	\$18,882,055	23.02%	\$18,402,760	23.41%	\$17,098,646	26.13%	\$16,429,899	25.23%	\$25,700,490	32.74%	\$96,513,851	26.11%
Non-M/W/DBE Firms	\$63,135,335	76.98%	\$60,203,719	76.59%	\$48,332,690	73.87%	\$48,699,066	74.77%	\$52,800,097	67.26%	\$273,170,907	73.89%
TOTAL	\$82,017,390	100.00%	\$78,606,479	100.00%	\$65,431,336	100.00%	\$65,128,964	100.00%	\$78,500,588	100.00%	\$369,684,757	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$220,750	0.28%	\$121,911	0.19%	\$1,705,595	2.62%	\$0	0.00%	\$2,048,256	0.55%
Alaska Native Corporations	\$0	0.00%	\$911,671	1.16%	\$5,320	0.01%	\$119,558	0.18%	\$0	0.00%	\$1,036,549	0.28%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$4,286,573	5.23%	\$4,835,368	6.15%	\$5,493,223	8.40%	\$3,202,165	4.92%	\$6,973,077	8.88%	\$24,790,407	6.71%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$382,014	0.59%	\$656,050	0.84%	\$1,038,064	0.28%
Hispanic Americans	\$4,086,544	4.98%	\$241,750	0.31%	\$383,162	0.59%	\$3,831,327	5.88%	\$2,629,043	3.35%	\$11,171,825	3.02%
Nonminority Women	\$4,546,335	5.54%	\$2,612,447	3.32%	\$3,652,754	5.58%	\$4,203,623	6.45%	\$11,839,050	15.08%	\$26,854,208	7.26%
Total DBE Certified Firms	\$12,919,452	15.75%	\$8,821,986	11.22%	\$9,656,370	14.76%	\$13,444,282	20.64%	\$22,097,219	28.15%	\$66,939,310	18.11%
Non-DBE Certified Firms	\$69,097,938	84.25%	\$69,784,493	88.78%	\$55,774,966	85.24%	\$51,684,683	79.36%	\$56,403,368	71.85%	\$302,745,448	81.89%
TOTAL	\$82,017,390	100.00%	\$78,606,479	100.00%	\$65,431,336	100.00%	\$65,128,964	100.00%	\$78,500,588	100.00%	\$369,684,757	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.
 Note: Refer to **Appendix A** for the corresponding utilization analysis of AELS and non-AELS subcontracts. **Exhibit A-5** and **Exhibit A-6** presents the separate utilization analysis of AELS and non-AELS subcontracts by year (based on all three funding modals).

Exhibit 4G presents the separate results of MGT’s construction subcontractor utilization on FHWA-funded projects by region for each M/W/DBE group. Of the total \$241.2 million FHWA-funded construction subcontract dollars awarded, M/W/DBE firms received 27.5 percent of the dollars. The utilization of nonminority women-owned firms (12.1%) was higher than any other M/W/DBE group. Among minority-owned firms, the utilization of American Indian/Alaska Native- (6.7%) and Hispanic American-owned³ firms (5.4%) were higher than other minority group.

In terms of percentage of FHWA-funded construction subcontract award dollars and region, the utilization of DBE certified firms was higher in the Southeast Region (25.3%) than any other region. However, in terms of construction subcontract award dollars and region, the Central Region (\$21.2 million) was higher than any other region. The corresponding subcontract results for the utilization of firms on FAA- and FTA-funded projects are presented separately in **Appendix A, Exhibit A-7** and **Exhibit A-8**. The analyses on AELS and non-AELS projects are presented separately in **Appendix A, Exhibit A-9** through **Exhibit A-12**.

EXHIBIT 4G
UTILIZATION ANALYSIS OF CONSTRUCTION SUBCONTRACTORS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$1,889,656	1.60%	\$0	0.00%	\$0	0.00%	\$1,889,656	0.78%
Alaska Native Corporations	\$3,957,605	3.35%	\$1,181,873	1.31%	\$0	0.00%	\$5,139,478	2.13%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$4,255,979	3.60%	\$5,265,338	5.84%	\$6,523,921	19.92%	\$16,045,238	6.65%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$1,020,922	3.12%	\$1,020,922	0.42%
Hispanic Americans	\$6,101,641	5.16%	\$6,898,868	7.65%	\$0	0.00%	\$13,000,509	5.39%
Nonminority Women	\$15,171,718	12.83%	\$12,109,469	13.42%	\$1,922,197	5.87%	\$29,203,385	12.11%
Total M/W/DBE Firms	\$31,376,600	26.53%	\$25,455,548	28.22%	\$9,467,041	28.91%	\$66,299,188	27.48%
Non-M/W/DBE Firms	\$86,895,366	73.47%	\$64,761,210	71.78%	\$23,278,038	71.09%	\$174,934,614	72.52%
TOTAL	\$118,271,966	100.00%	\$90,216,758	100.00%	\$32,745,078	100.00%	\$241,233,802	100.00%
DBE Certified Firms								
African Americans	\$1,889,656	1.60%	\$0	0.00%	\$0	0.00%	\$1,889,656	0.78%
Alaska Native Corporations	\$0	0.00%	\$947,919	1.05%	\$0	0.00%	\$947,919	0.39%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$3,846,966	3.25%	\$604,060	0.67%	\$6,523,921	19.92%	\$10,974,947	4.55%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$1,020,922	3.12%	\$1,020,922	0.42%
Hispanic Americans	\$4,871,176	4.12%	\$5,160,633	5.72%	\$0	0.00%	\$10,031,809	4.16%
Nonminority Women	\$10,595,935	8.96%	\$9,424,446	10.45%	\$723,089	2.21%	\$20,743,470	8.60%
Total DBE Certified Firms	\$21,203,734	17.93%	\$16,137,058	17.89%	\$8,267,932	25.25%	\$45,608,723	18.91%
Non-DBE Certified Firms	\$97,068,232	82.07%	\$74,079,700	82.11%	\$24,477,146	74.75%	\$195,625,079	81.09%
TOTAL	\$118,271,966	100.00%	\$90,216,758	100.00%	\$32,745,078	100.00%	\$241,233,802	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding subcontract results for the utilization of firms on FAA- and FTA-funded projects are presented separately in **Appendix A, Exhibit A-7** and **Exhibit A-8**. The analyses on AELS and non-AELS projects are presented separately in **Appendix A, Exhibit A-9** through **Exhibit A-12**.

³ Of the \$13 million that was awarded to Hispanic American-owned firms on FHWA-funded construction subcontracts, \$11 million went to two Hispanic American-owned firms, one of the firms is no longer in business and the other firm was acquired by a non-DBE certified firm.

Exhibit 4H shows the utilization of construction subcontractors on FHWA-funded projects for each year of the study period. In terms of percentage of construction subcontract award dollars and year, M/W/DBE utilization was higher in FFY2011 (35.6%) than any other year of the study period followed by FFY2009 (29.8%). In terms of percentage of FHWA-funded construction subcontract dollars and year, the utilization of DBE certified firms was the lowest in FFY2007 (14.1%), but made a sharp incline in FFY2011 (29.6%). The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in **Appendix A, Exhibit A-13** and **Exhibit A-14**. The analyses on AELS and non-AELS projects are presented separately in **Appendix A, Exhibit A-15** through **Exhibit A-18**.

EXHIBIT 4H
 UTILIZATION ANALYSIS OF CONSTRUCTION SUBCONTRACTORS BY FEDERAL FISCAL YEAR
 AND BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$220,750	0.74%	\$0	0.00%	\$1,668,906	3.36%	\$0	0.00%	\$1,889,656	0.78%
Alaska Native Corporations	\$1,405,513	2.25%	\$1,120,876	3.76%	\$458,701	0.97%	\$530,388	1.07%	\$1,624,000	3.11%	\$5,139,478	2.13%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,207,185	3.54%	\$1,910,675	6.41%	\$6,867,911	14.54%	\$1,731,970	3.49%	\$3,327,497	6.37%	\$16,045,238	6.65%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$364,872	0.73%	\$656,050	1.26%	\$1,020,922	0.42%
Hispanic Americans	\$4,938,825	7.92%	\$1,060,814	3.56%	\$757,722	1.60%	\$3,345,596	6.74%	\$2,897,551	5.55%	\$13,000,509	5.39%
Nonminority Women	\$5,138,298	8.24%	\$2,837,674	9.52%	\$6,005,337	12.72%	\$5,148,267	10.37%	\$10,073,809	19.29%	\$29,203,385	12.11%
Total M/W/DBE Firms	\$13,689,821	21.96%	\$7,150,790	24.00%	\$14,089,670	29.84%	\$12,789,999	25.76%	\$18,578,908	35.58%	\$66,299,188	27.48%
Non-M/W/DBE Firms	<u>\$48,642,301</u>	<u>78.04%</u>	<u>\$22,649,763</u>	<u>76.00%</u>	<u>\$33,130,741</u>	<u>70.16%</u>	<u>\$36,869,634</u>	<u>74.24%</u>	<u>\$33,642,176</u>	<u>64.42%</u>	<u>\$174,934,614</u>	<u>72.52%</u>
TOTAL	\$62,332,122	100.00%	\$29,800,553	100.00%	\$47,220,411	100.00%	\$49,659,633	100.00%	\$52,221,084	100.00%	\$241,233,802	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$220,750	0.74%	\$0	0.00%	\$1,668,906	3.36%	\$0	0.00%	\$1,889,656	0.78%
Alaska Native Corporations	\$0	0.00%	\$911,671	3.06%	\$5,320	0.01%	\$30,928	0.06%	\$0	0.00%	\$947,919	0.39%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,142,573	3.44%	\$1,910,675	6.41%	\$3,168,798	6.71%	\$832,694	1.68%	\$2,920,207	5.59%	\$10,974,947	4.55%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$364,872	0.73%	\$656,050	1.26%	\$1,020,922	0.42%
Hispanic Americans	\$3,893,729	6.25%	\$220,750	0.74%	\$379,929	0.80%	\$3,235,440	6.52%	\$2,301,960	4.41%	\$10,031,809	4.16%
Nonminority Women	\$2,751,117	4.41%	\$1,045,704	3.51%	\$3,424,588	7.25%	\$3,938,842	7.93%	\$9,583,219	18.35%	\$20,743,470	8.60%
Total DBE Certified Firms	\$8,787,419	14.10%	\$4,309,550	14.46%	\$6,978,635	14.78%	\$10,071,682	20.28%	\$15,461,437	29.61%	\$45,608,723	18.91%
Non-DBE Certified Firms	<u>\$53,544,703</u>	<u>85.90%</u>	<u>\$25,491,003</u>	<u>85.54%</u>	<u>\$40,241,775</u>	<u>85.22%</u>	<u>\$39,587,951</u>	<u>79.72%</u>	<u>\$36,759,647</u>	<u>70.39%</u>	<u>\$195,625,079</u>	<u>81.09%</u>
TOTAL	\$62,332,122	100.00%	\$29,800,553	100.00%	\$47,220,411	100.00%	\$49,659,633	100.00%	\$52,221,084	100.00%	\$241,233,802	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded during the study period of October 1, 2006 and September 30, 2011.
 Note: The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in [Appendix A](#), [Exhibit A-13](#) and [Exhibit A-14](#). The analyses on AELS and non-AELS projects are presented separately in [Appendix A](#), [Exhibit A-15](#) through [Exhibit A-18](#).

The next series of exhibits present the results of MGT’s utilization analyses on prime construction, AELS, and non-AELS projects. **Exhibit 4I** presents the total prime contract award dollars by business category that were analyzed for the study.

EXHIBIT 4I
PRIME CONTRACTOR AWARD DOLLARS BY BUSINESS CATEGORY
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS CATEGORY	PRIME CONTRACT AWARD	
	\$	Percent
Construction	\$1,896,000,777	97.65%
AELS	\$45,575,703	2.35%
Non-AELS	<u>\$30,452,947</u>	<u>1.57%</u>
TOTAL	\$1,941,576,480	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4J shows the utilization of prime contractors on construction projects (all three funding modals combined) by region. Statewide, M/W/DBE firms received 5.7 percent of the prime construction award dollars. The utilization of Hispanic American-owned⁴ firms (3.4%) was higher than any other M/W/DBE group followed by Alaska Native Corporations (1%) and American Indian/Alaska Native-owned firms (1%). In terms of region, the utilization of M/W/DBE firms was higher in the Northern Region (8.9%) followed by the Southeast Region (6.9%) and Central Region (2.9%). In terms of DBE certified firms, utilization was higher in the Central Region (0.7%) followed by the Southeast Region (0.1%) and the Northern Region (0.01%).

⁴ Of the \$63.9 million that was awarded to Hispanic American-owned firms on construction prime contracts (based on all three funding modals), \$51.5 million went to three Hispanic American-owned firms, of which one of the firms is no longer eligible for DBE certification, one firm is no longer in business, and one firm was acquired by a non-DBE certified firm.

EXHIBIT 4J
 UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS BY REGION
 AND BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$8,064,380	0.90%	\$10,888,238	1.67%	\$0	0.00%	\$18,952,617	1.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$11,698,117	1.30%	\$0	0.00%	\$7,002,684	2.02%	\$18,700,801	0.99%
Asian Indian/Pacific Islanders	\$0	0.00%	\$1,687,453	0.26%	\$426,321	0.12%	\$2,113,774	0.11%
Hispanic Americans	\$6,492,554	0.72%	\$45,012,293	6.90%	\$12,407,006	3.58%	\$63,911,854	3.37%
Nonminority Women	\$0	0.00%	\$807,096	0.12%	\$4,148,012	1.20%	\$4,955,108	0.26%
Total M/W/DBE Firms	\$26,255,051	2.93%	\$58,395,079	8.95%	\$23,984,023	6.93%	\$108,634,154	5.73%
Non-M/W/DBE Firms	\$870,905,673	97.07%	\$594,219,877	91.05%	\$322,241,073	93.07%	\$1,787,366,623	94.27%
TOTAL	\$897,160,724	100.00%	\$652,614,956	100.00%	\$346,225,096	100.00%	\$1,896,000,777	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$5,448,815	0.61%	\$0	0.00%	\$0	0.00%	\$5,448,815	0.29%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$315,250	0.09%	\$315,250	0.02%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$362,534	0.04%	\$0	0.00%	\$0	0.00%	\$362,534	0.02%
Nonminority Women	\$0	0.00%	\$71,922	0.01%	\$0	0.00%	\$71,922	0.00%
Total DBE Certified Firms	\$5,811,349	0.65%	\$71,922	0.01%	\$315,250	0.09%	\$6,198,521	0.33%
Non-DBE Certified Firms	\$891,349,375	99.35%	\$652,543,034	99.99%	\$345,909,846	99.91%	\$1,889,802,256	99.67%
TOTAL	\$897,160,724	100.00%	\$652,614,956	100.00%	\$346,225,096	100.00%	\$1,896,000,777	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4K shows the utilization of prime contractors on construction projects (all three funding modals combined) for each year of the study period by M/W/DBE group. In terms of percentage and year, M/W/DBE utilization was higher in FFY2009 (8.1%) than any other year of the study period followed by FFY2011 (7.4%). Similar to the utilization of M/W/DBE firms, the utilization of DBE certified firms was higher in FFY2009 (1.6%). However, in contrast, DBE certified firms were not awarded prime construction contracts in FFY2008, FFY2010, and FFY2011.

EXHIBIT 4K
UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS BY FEDERAL FISCAL YEAR
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$1,117,977	0.33%	\$5,448,815	1.47%	\$2,615,565	0.66%	\$9,770,261	2.26%	\$18,952,617	1.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$6,605,921	1.85%	\$0	0.00%	\$7,390,851	1.99%	\$4,704,030	1.18%	\$0	0.00%	\$18,700,801	0.99%
Asian Indian/Pacific Islanders	\$0	0.00%	\$1,687,453	0.50%	\$0	0.00%	\$426,321	0.11%	\$0	0.00%	\$2,113,774	0.11%
Hispanic Americans	\$9,475,046	2.65%	\$14,398,468	4.28%	\$16,552,873	4.46%	\$3,958,480	0.99%	\$19,526,987	4.53%	\$63,911,854	3.37%
Nonminority Women	\$395,860	0.11%	\$274,900	0.08%	\$824,000	0.22%	\$821,500	0.21%	\$2,638,848	0.61%	\$4,955,108	0.26%
Total M/W/DBE Firms	\$16,476,827	4.60%	\$17,478,797	5.19%	\$30,216,538	8.14%	\$12,525,895	3.14%	\$31,936,096	7.40%	\$108,634,154	5.73%
Non-M/W/DBE Firms	\$341,377,649	95.40%	\$319,030,665	94.81%	\$340,907,173	91.86%	\$386,568,689	96.86%	\$399,482,446	92.60%	\$1,787,366,623	94.27%
TOTAL	\$357,854,476	100.00%	\$336,509,462	100.00%	\$371,123,712	100.00%	\$399,094,584	100.00%	\$431,418,542	100.00%	\$1,896,000,777	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$5,448,815	1.47%	\$0	0.00%	\$0	0.00%	\$5,448,815	0.29%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$315,250	0.09%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$315,250	0.02%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$362,534	0.10%	\$0	0.00%	\$0	0.00%	\$362,534	0.02%
Nonminority Women	\$71,922	0.02%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$71,922	0.00%
Total DBE Certified Firms	\$387,172	0.11%	\$0	0.00%	\$5,811,349	1.57%	\$0	0.00%	\$0	0.00%	\$6,198,521	0.33%
Non-DBE Certified Firms	\$357,467,304	99.89%	\$336,509,462	100.00%	\$365,312,363	98.43%	\$399,094,584	100.00%	\$431,418,542	100.00%	\$1,889,802,256	99.67%
TOTAL	\$357,854,476	100.00%	\$336,509,462	100.00%	\$371,123,712	100.00%	\$399,094,584	100.00%	\$431,418,542	100.00%	\$1,896,000,777	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4L shows the utilization of prime contractors on FHWA-funded construction projects by region. Statewide, M/W/DBE firms received 5.1 percent of the dollars awarded on FHWA-funded construction projects. The utilization of Hispanic American-owned⁵ firms (3.1%) was higher than any other M/W/DBE group followed by American Indian/Alaska Native- (1.2%) and nonminority women-owned firms (0.4%). In terms of percentage of dollars by region, the utilization of M/W/DBE firms on FHWA-funded construction contracts were higher in the Southeast Region (7.5%) followed by the Northern Region (4.9%). In terms of DBE certified firms and percentage of dollars by region, the utilization of DBE certified firms was also higher in the Southeast Region (0.2%). The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded construction projects are presented separately in **Appendix A, Exhibit A-19** and **Exhibit A-20**.

EXHIBIT 4L
UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$2,390,565	0.55%	\$1,117,977	0.26%	\$0	0.00%	\$3,508,542	0.32%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$9,625,117	2.22%	\$0	0.00%	\$3,875,226	1.82%	\$13,500,343	1.24%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$426,321	0.20%	\$426,321	0.04%
Hispanic Americans	\$6,492,554	1.50%	\$19,363,825	4.42%	\$8,118,006	3.81%	\$33,974,386	3.13%
Nonminority Women	\$0	0.00%	\$807,096	0.18%	\$3,509,312	1.65%	\$4,316,408	0.40%
Total M/W/DBE Firms	\$18,508,236	4.26%	\$21,288,898	4.86%	\$15,928,864	7.48%	\$55,725,999	5.14%
Non-M/W/DBE Firms	\$415,591,532	95.74%	\$416,760,903	95.14%	\$197,125,095	92.52%	\$1,029,477,529	94.86%
TOTAL	\$434,099,768	100.00%	\$438,049,801	100.00%	\$213,053,959	100.00%	\$1,085,203,528	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$315,250	0.15%	\$315,250	0.03%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$362,534	0.08%	\$0	0.00%	\$0	0.00%	\$362,534	0.03%
Nonminority Women	\$0	0.00%	\$71,922	0.02%	\$0	0.00%	\$71,922	0.01%
Total DBE Certified Firms	\$362,534	0.08%	\$71,922	0.02%	\$315,250	0.15%	\$749,706	0.07%
Non-DBE Certified Firms	\$433,737,234	99.92%	\$437,977,879	99.98%	\$212,738,709	99.85%	\$1,084,453,822	99.93%
TOTAL	\$434,099,768	100.00%	\$438,049,801	100.00%	\$213,053,959	100.00%	\$1,085,203,528	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded construction projects are presented separately in **Appendix A, Exhibit A-19** and **Exhibit A-20**.

Exhibit 4M shows the utilization of prime contractors on FHWA-funded construction projects for each year of the study period. M/W/DBE utilization was higher in FFY2011 (8.3%) than any other year of the study period followed by FFY2009 (6.4%). In FFY2007 and FFY2009, the utilization of DBE certified firms was 0.2 percent in each year. DBE certified firms were not used as prime contractors on FHWA-funding construction projects in FFY2008, FFY2010, and FFY2011. The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in **Appendix A, Exhibit A-21** and **Exhibit A-22**.

⁵ About \$34 million was awarded to Hispanic American-owned firms on FHWA-funded construction prime contracts, \$25.9 million went to three Hispanic American-owned firms, of which one of the firms is no longer eligible for DBE certification, one firm is no longer in business, and one firm was acquired by a non-DBE certified firm.

EXHIBIT 4M
 UTILIZATION ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS BY FEDERAL FISCAL YEAR
 AND BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$1,117,977	0.64%	\$0	0.00%	\$2,390,565	1.07%	\$0	0.00%	\$3,508,542	0.32%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$4,532,921	2.11%	\$0	0.00%	\$7,390,851	3.52%	\$1,576,571	0.70%	\$0	0.00%	\$13,500,343	1.24%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$426,321	0.19%	\$0	0.00%	\$426,321	0.04%
Hispanic Americans	\$5,186,046	2.42%	\$0	0.00%	\$5,302,873	2.52%	\$3,958,480	1.77%	\$19,526,987	7.45%	\$33,974,386	3.13%
Nonminority Women	\$395,860	0.18%	\$274,900	0.16%	\$824,000	0.39%	\$597,500	0.27%	\$2,224,148	0.85%	\$4,316,408	0.40%
Total M/W/DBE Firms	\$10,114,827	4.72%	\$1,392,877	0.80%	\$13,517,723	6.43%	\$8,949,436	3.99%	\$21,751,135	8.29%	\$55,725,999	5.14%
Non-M/W/DBE Firms	\$204,364,076	95.28%	\$172,708,553	99.20%	\$196,669,744	93.57%	\$215,256,244	96.01%	\$240,478,912	91.71%	\$1,029,477,529	94.86%
TOTAL	\$214,478,903	100.00%	\$174,101,430	100.00%	\$210,187,467	100.00%	\$224,205,680	100.00%	\$262,230,047	100.00%	\$1,085,203,528	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$315,250	0.15%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$315,250	0.03%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$362,534	0.17%	\$0	0.00%	\$0	0.00%	\$362,534	0.03%
Nonminority Women	\$71,922	0.03%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$71,922	0.01%
Total DBE Certified Firms	\$387,172	0.18%	\$0	0.00%	\$362,534	0.17%	\$0	0.00%	\$0	0.00%	\$749,706	0.07%
Non-DBE Certified Firms	\$214,091,731	99.82%	\$174,101,430	100.00%	\$209,824,933	99.83%	\$223,779,359	100.00%	\$262,230,047	100.00%	\$1,084,027,501	99.93%
TOTAL	\$214,478,903	100.00%	\$174,101,430	100.00%	\$210,187,467	100.00%	\$223,779,359	100.00%	\$262,230,047	100.00%	\$1,084,777,207	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization of firms on FAA- and FTA-funded construction projects are presented separately in [Appendix A, Exhibit A-21](#) and [Exhibit A-22](#).

Exhibit 4N shows the utilization of prime consultants on AELS projects (all three funding modals combined) by region. Statewide, M/W/DBE firms received 2.6 percent of the AELS prime award dollars. The utilization of nonminority women-owned firms (1.7%) was higher than any M/W/DBE group. In terms of percentage of AELS prime award dollars and region, the utilization of M/W/DBE firms was higher in the Northern Region (5.6%) than any other region. DBE certified firms were not awarded any prime AELS projects.

EXHIBIT 4N
UTILIZATION ANALYSIS OF AELS PRIME CONSULTANTS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$336,030	1.16%	\$69,880	0.56%	\$0	0.00%	\$405,910	0.89%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$134,720	0.47%	\$621,618	5.01%	\$0	0.00%	\$756,338	1.66%
Total M/W/DBE Firms	\$470,750	1.63%	\$691,498	5.58%	\$0	0.00%	\$1,162,248	2.55%
Non-M/W/DBE Firms	\$28,455,162	98.37%	\$11,710,193	94.42%	\$4,248,100	100.00%	\$44,413,455	97.45%
TOTAL	\$28,925,912	100.00%	\$12,401,691	100.00%	\$4,248,100	100.00%	\$45,575,703	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	\$28,925,912	100.00%	\$12,401,691	100.00%	\$4,248,100	100.00%	\$45,575,703	100.00%
TOTAL	\$28,925,912	100.00%	\$12,401,691	100.00%	\$4,248,100	100.00%	\$45,575,703	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4O shows the utilization of prime consultants on AELS projects (all three funding modals combined) by federal fiscal year. M/W/DBE utilization was higher in FFY2010 (4.5%) than any other year of the study period followed by FFY2008 (4.3%). DBE certified firms were not awarded any prime AELS projects.

EXHIBIT 40
UTILIZATION ANALYSIS OF AELS PRIME CONSULTANTS BY FEDERAL FISCAL YEAR
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$348,934	4.02%	\$0	0.00%	\$56,976	0.45%	\$0	0.00%	\$405,910	0.89%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$148,464	2.46%	\$21,605	0.25%	\$0	0.00%	\$512,458	4.06%	\$73,811	0.98%	\$756,338	1.66%
Total M/W/DBE Firms	\$148,464	2.46%	\$370,539	4.27%	\$0	0.00%	\$569,434	4.51%	\$73,811	0.98%	\$1,162,248	2.55%
Non-M/W/DBE Firms	<u>\$5,889,529</u>	<u>97.54%</u>	<u>\$8,303,283</u>	<u>95.73%</u>	<u>\$10,717,022</u>	<u>100.00%</u>	<u>\$12,066,695</u>	<u>95.49%</u>	<u>\$7,436,926</u>	<u>99.02%</u>	<u>\$44,413,455</u>	<u>97.45%</u>
TOTAL	\$6,037,993	100.00%	\$8,673,822	100.00%	\$10,717,022	100.00%	\$12,636,129	100.00%	\$7,510,737	100.00%	\$45,575,703	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	<u>\$6,037,993</u>	<u>100.00%</u>	<u>\$8,673,822</u>	<u>100.00%</u>	<u>\$10,717,022</u>	<u>100.00%</u>	<u>\$12,636,129</u>	<u>100.00%</u>	<u>\$7,510,737</u>	<u>100.00%</u>	<u>\$45,575,703</u>	<u>100.00%</u>
TOTAL	\$6,037,993	100.00%	\$8,673,822	100.00%	\$10,717,022	100.00%	\$12,636,129	100.00%	\$7,510,737	100.00%	\$45,575,703	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4P shows the separate results on the utilization of prime consultants on FHWA-funded AELS projects by region. Statewide, M/W/DBE firms received 5.5 percent of the FHWA-funded AELS prime award dollars. The utilization of nonminority women-owned firms (3.4%) was higher than any M/W/DBE group. In terms of percentage of FHWA-funded AELS prime award dollars and region, the utilization of M/W/DBE firms was higher in the Northern Region (13%) than any other region. DBE certified firms were not used as prime consultants on AELS projects. The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded AELS projects are presented separately in **Appendix A, Exhibit A-23** and **Exhibit A-24**.

EXHIBIT 4P
UTILIZATION ANALYSIS OF AELS PRIME CONSULTANTS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$336,030	2.58%	\$69,880	1.57%	\$0	0.00%	\$405,910	2.13%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$134,720	1.03%	\$512,458	11.48%	\$0	0.00%	\$647,178	3.39%
Total M/W/DBE Firms	\$470,750	3.62%	\$582,338	13.04%	\$0	0.00%	\$1,053,088	5.52%
Non-M/W/DBE Firms	<u>\$12,546,910</u>	<u>96.38%</u>	<u>\$3,882,687</u>	<u>86.96%</u>	<u>\$1,599,060</u>	<u>100.00%</u>	<u>\$18,028,657</u>	<u>94.48%</u>
TOTAL	\$13,017,660	100.00%	\$4,465,025	100.00%	\$1,599,060	100.00%	\$19,081,745	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	<u>\$13,017,660</u>	<u>100.00%</u>	<u>\$4,465,025</u>	<u>100.00%</u>	<u>\$1,599,060</u>	<u>100.00%</u>	<u>\$19,081,745</u>	<u>100.00%</u>
TOTAL	\$13,017,660	100.00%	\$4,465,025	100.00%	\$1,599,060	100.00%	\$19,081,745	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded AELS projects are presented separately in **Appendix A, Exhibit A-23** and **Exhibit A-24**.

Exhibit 4Q shows the utilization of prime consultants on FHWA-funded AELS projects for each year of the study period. M/W/DBE utilization was higher in FFY2010 (10.3%) than any other year of the study period followed by FFY2008 (8.9%). The corresponding results for the utilization analyses of firms by federal fiscal year on FAA- and FTA-funded AELS projects are presented separately in **Appendix A, Exhibit A-25** and **Exhibit A-26**.

EXHIBIT 4Q
 UTILIZATION ANALYSIS OF AELS PRIME CONSULTANTS BY FEDERAL FISCAL YEAR
 AND BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$348,934	8.35%	\$0	0.00%	\$56,976	1.03%	\$0	0.00%	\$405,910	2.13%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$39,304	1.57%	\$21,605	0.52%	\$0	0.00%	\$512,458	9.28%	\$73,811	3.12%	\$647,178	3.39%
Total M/W/DBE Firms	\$39,304	1.57%	\$370,539	8.87%	\$0	0.00%	\$569,434	10.31%	\$73,811	3.12%	\$1,053,088	5.52%
Non-M/W/DBE Firms	<u>\$2,459,529</u>	<u>98.43%</u>	<u>\$3,807,729</u>	<u>91.13%</u>	<u>\$4,515,387</u>	<u>100.00%</u>	<u>\$4,954,061</u>	<u>89.69%</u>	<u>\$2,291,951</u>	<u>96.88%</u>	<u>\$18,028,657</u>	<u>94.48%</u>
TOTAL	\$2,498,833	100.00%	\$4,178,268	100.00%	\$4,515,387	100.00%	\$5,523,495	100.00%	\$2,365,762	100.00%	\$19,081,745	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	<u>\$2,498,833</u>	<u>100.00%</u>	<u>\$4,178,268</u>	<u>100.00%</u>	<u>\$4,515,387</u>	<u>100.00%</u>	<u>\$5,523,495</u>	<u>100.00%</u>	<u>\$2,365,762</u>	<u>100.00%</u>	<u>\$19,081,745</u>	<u>100.00%</u>
TOTAL	\$2,498,833	100.00%	\$4,178,268	100.00%	\$4,515,387	100.00%	\$5,523,495	100.00%	\$2,365,762	100.00%	\$19,081,745	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization analyses of firms by federal fiscal year on FAA- and FTA-funded AELS projects are presented separately in [Appendix A, Exhibit A-25](#) and [Exhibit A-26](#).

Exhibit 4R shows the utilization of prime consultants on non-AELS projects (all three funding modals combined) by region. Statewide, M/W/DBE firms received 0.7 percent of the non-AELS prime consultant award dollars. Among M/W/DBE firms, only nonminority women-owned firms were utilized. In terms of region, the utilization was higher in the Southeast Region (3.7%) than any other region. DBE certified firms were not used as prime consultants on non-AELS projects.

EXHIBIT 4R
UTILIZATION ANALYSIS OF NON-AELS PRIME CONSULTANTS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$85,000	0.31%	\$0	0.00%	\$112,060	3.69%	\$197,060	0.65%
Total M/W/DBE Firms	\$85,000	0.31%	\$0	0.00%	\$112,060	3.69%	\$197,060	0.65%
Non-M/W/DBE Firms	\$27,162,085	99.69%	\$168,720	100.00%	\$2,925,082	96.31%	\$30,255,887	99.35%
TOTAL	\$27,247,085	100.00%	\$168,720	100.00%	\$3,037,142	100.00%	\$30,452,947	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	\$27,247,085	100.00%	\$168,720	100.00%	\$3,037,142	100.00%	\$30,452,947	100.00%
TOTAL	\$27,247,085	100.00%	\$168,720	100.00%	\$3,037,142	100.00%	\$30,452,947	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4S shows the utilization of prime consultants on non-AELS projects (all three funding modals combined) for each year of the study period. In terms of percentage of subcontract dollars, M/W/DBE utilization was higher in FFY2007 (1.7%) than any other year of the study period.

EXHIBIT 4S
UTILIZATION ANALYSIS OF NON-AELS PRIME CONSULTANTS BY FEDERAL FISCAL YEAR
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$85,000	1.72%	\$0	0.00%	\$0	0.00%	\$112,060	1.05%	\$0	0.00%	\$197,060	0.65%
Total M/W/DBE Firms	\$85,000	1.72%	\$0	0.00%	\$0	0.00%	\$112,060	1.05%	\$0	0.00%	\$197,060	0.65%
Non-M/W/DBE Firms	\$4,866,476	98.28%	\$4,932,451	100.00%	\$9,624,946	100.00%	\$10,520,803	98.95%	\$311,210	100.00%	\$30,255,887	99.35%
TOTAL	\$4,951,476	100.00%	\$4,932,451	100.00%	\$9,624,946	100.00%	\$10,632,863	100.00%	\$311,210	100.00%	\$30,452,947	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	\$4,951,476	100.00%	\$4,932,451	100.00%	\$9,624,946	100.00%	\$10,632,863	100.00%	\$311,210	100.00%	\$30,452,947	100.00%
TOTAL	\$4,951,476	100.00%	\$4,932,451	100.00%	\$9,624,946	100.00%	\$10,632,863	100.00%	\$311,210	100.00%	\$30,452,947	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4T shows the utilization of prime consultants on FHWA-funded non-AELS projects by region. Statewide, M/W/DBE firms received 1.37 percent of non-AELS prime consultant award dollars. Among M/W/DBE firms, only nonminority women-owned firms were utilized. In terms of region, the utilization was higher in the Southeast Region than any other region. DBE certified firms were not used as prime consultants on non-AELS projects. The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded non-AELS projects are presented separately in **Appendix A, Exhibit A-27** and **Exhibit A-28**.

EXHIBIT 4T
UTILIZATION ANALYSIS OF NON-AELS PRIME CONSULTANTS BY REGION
AND BUSINESS OWNERSHIP CLASSIFICATION
FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$85,000	0.56%	\$0	0.00%	\$112,060	77.45%	\$197,060	1.28%
Total M/W/DBE Firms	\$85,000	0.56%	\$0	0.00%	\$112,060	77.45%	\$197,060	1.28%
Non-M/W/DBE Firms	<u>\$15,055,618</u>	<u>99.44%</u>	<u>\$111,320</u>	<u>100.00%</u>	<u>\$32,620</u>	<u>22.55%</u>	<u>\$15,199,558</u>	<u>98.72%</u>
TOTAL	\$15,140,618	100.00%	\$111,320	100.00%	\$144,680	100.00%	\$15,396,618	100.00%
DBE Certified Firms								
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	<u>\$15,140,618</u>	<u>100.00%</u>	<u>\$111,320</u>	<u>100.00%</u>	<u>\$144,680</u>	<u>100.00%</u>	<u>\$15,396,618</u>	<u>100.00%</u>
TOTAL	\$15,140,618	100.00%	\$111,320	100.00%	\$144,680	100.00%	\$15,396,618	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization analyses of firms by region on FAA- and FTA-funded non-AELS projects are presented separately in **Appendix A, Exhibit A-27** and **Exhibit A-28**.

Exhibit 4U shows the utilization of prime consultants on FHWA-funded non-AELS projects for each year of the study period. Similar to FHWA-funded AELS projects, M/W/DBE utilization was also higher in FFY2010 (3.3%). DBE certified firms were not used as prime consultants on non-AELS projects. The corresponding results for the utilization analyses of firms by year on FAA- and FTA-funded non-AELS projects are presented separately in **Appendix A, Exhibit A-29** and **Exhibit A-30**.

EXHIBIT 4U
 UTILIZATION ANALYSIS OF NON-AELS PRIME CONSULTANTS BY FEDERAL FISCAL YEAR
 AND BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	2007		2008		2009		2010		2011		TOTAL	
	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$85,000	2.82%	\$0	0.00%	\$0	0.00%	\$112,060	3.28%	\$0	0.00%	\$197,060	1.28%
Total M/W/DBE Firms	\$85,000	2.82%	\$0	0.00%	\$0	0.00%	\$112,060	3.28%	\$0	0.00%	\$197,060	1.28%
Non-M/W/DBE Firms	<u>\$2,930,390</u>	<u>97.18%</u>	<u>\$1,009,652</u>	<u>100.00%</u>	<u>\$7,739,056</u>	<u>100.00%</u>	<u>\$3,300,400</u>	<u>96.72%</u>	<u>\$220,060</u>	<u>100.00%</u>	<u>\$15,199,558</u>	<u>98.72%</u>
TOTAL	\$3,015,390	100.00%	\$1,009,652	100.00%	\$7,739,056	100.00%	\$3,412,460	100.00%	\$220,060	100.00%	\$15,396,618	100.00%
DBE Certified Firms												
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Total DBE Certified Firms	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
Non-DBE Certified Firms	<u>\$3,015,390</u>	<u>100.00%</u>	<u>\$1,009,652</u>	<u>100.00%</u>	<u>\$7,739,056</u>	<u>100.00%</u>	<u>\$3,412,460</u>	<u>100.00%</u>	<u>\$220,060</u>	<u>100.00%</u>	<u>\$15,396,618</u>	<u>100.00%</u>
TOTAL	\$3,015,390	100.00%	\$1,009,652	100.00%	\$7,739,056	100.00%	\$3,412,460	100.00%	\$220,060	100.00%	\$15,396,618	100.00%

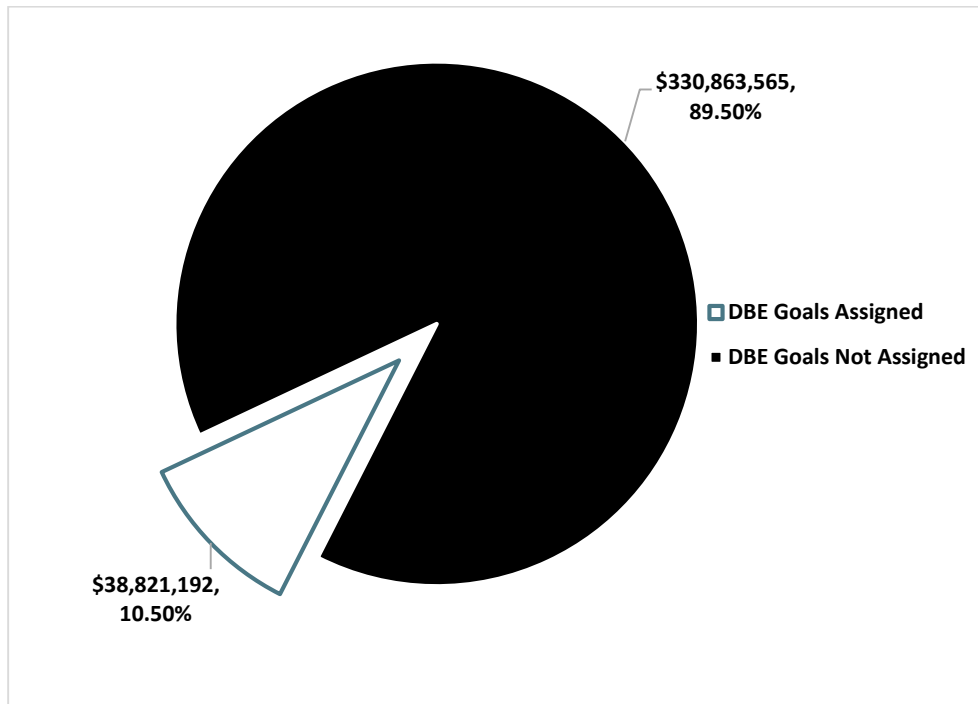
Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: The corresponding results for the utilization analyses of firms by year on FAA- and FTA-funded non-AELS projects are presented separately in [Appendix A, Exhibit A-29](#) and [Exhibit A-30](#).

5. NON-GOAL ANALYSIS

To further examine prime contractor utilization of M/W/DBE subcontractors, MGT also examined ADOT&PF construction projects with DBE goals and without DBE goals. **Exhibit 4V** shows that during the study period much of the construction subcontract dollars awarded (89.5%) were on projects without DBE goals.

EXHIBIT 4V
 NON-GOAL ANALYSIS OF CONSTRUCTION SUBCONTRACTOR UTILIZATION
 FUNDING MODALS: FHWA, FAA, AND FTA



Source: MGT developed a Master Contract Database for the study period of October 1, 2006, and September 30, 2011.

Exhibit 4W shows the utilization of subcontractors on construction projects (all three funding modals) with DBE goals compared to projects with no DBE goals. M/W/DBE subcontractors received 40.5 percent of the dollars awarded on projects with DBE goals compared to 24.4 percent of the dollars awarded on projects with no DBE goals. \$80.8 million dollars on projects with no DBE goals were awarded to M/W/DBE subcontractors, whereas \$15.7 million dollars were awarded on projects with DBE goals. In terms of DBE certified firms, 38.5 percent of the dollars on projects with DBE goals were awarded to DBE certified firms compared to 16.8 percent of the dollars awarded on projects with no DBE goals. \$55.6 million dollars on projects with no DBE goals were awarded to DBE subcontractors, whereas close to \$15 million dollars were awarded on projects with DBE goals.

EXHIBIT 4W
 NON-GOAL ANALYSIS OF CONSTRUCTION SUBCONTRACTOR UTILIZATION
 BY BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODALS: FHWA, FAA, AND FTA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms						
African Americans	\$36,689	0.09%	\$2,011,567	0.61%	\$2,048,256	0.55%
Alaska Native Corporations	\$88,630	0.23%	\$9,361,823	2.83%	\$9,450,453	2.56%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$9,120,882	23.49%	\$21,696,116	6.56%	\$30,816,998	8.34%
Asian Indian/Pacific Islanders	\$673,192	1.73%	\$364,872	0.11%	\$1,038,064	0.28%
Hispanic Americans	\$1,600,797	4.12%	\$12,717,623	3.84%	\$14,318,420	3.87%
Nonminority Women	\$4,200,938	10.82%	\$34,640,721	10.47%	\$38,841,659	10.51%
Total M/W/DBE Firms	\$15,721,128	40.50%	\$80,792,722	24.42%	\$96,513,851	26.11%
Non-M/W/DBE Firms	<u>\$23,100,064</u>	<u>59.50%</u>	<u>\$250,070,842</u>	<u>75.58%</u>	<u>\$273,170,907</u>	<u>73.89%</u>
TOTAL	\$38,821,192	100.00%	\$330,863,565	100.00%	\$369,684,757	100.00%
DBE Certified Firms						
African Americans	\$36,689	0.09%	\$2,011,567.36	0.61%	\$2,048,256.36	0.55%
Alaska Native Corporations	\$88,630	0.23%	\$1,843,419.10	0.56%	\$1,932,049.10	0.52%
Alaska Tribal Corporations	\$0	0.00%	\$0.00	0.00%	\$0.00	0.00%
American Indians/Alaska Natives	\$8,690,182	22.39%	\$18,872,372.27	5.70%	\$27,562,554.36	7.46%
Asian Indian/Pacific Islanders	\$673,192	1.73%	\$364,871.92	0.11%	\$1,038,063.92	0.28%
Hispanic Americans	\$1,600,797	4.12%	\$9,571,028.66	2.89%	\$11,171,825.47	3.02%
Nonminority Women	\$3,868,038	9.96%	\$22,986,169.62	6.95%	\$26,854,207.90	7.26%
Total DBE Certified Firms	\$14,957,528	38.53%	\$55,649,428.93	16.82%	\$70,606,957.11	19.10%
Non-DBE Certified Firms	<u>\$23,863,664</u>	<u>61.47%</u>	<u>\$278,881,783.39</u>	<u>84.29%</u>	<u>\$302,745,447.67</u>	<u>81.89%</u>
TOTAL	\$38,821,192	100.00%	\$330,863,564.74	100.00%	\$369,684,757.20	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4X compares the utilization of M/W/DBE and DBE certified subcontractors by region on construction projects (all three funding modals) with DBE goals compared to projects with no DBE goals.

As shown in **Exhibit 4X**, in terms of region and total percentage of construction subcontractor dollars awarded on projects with no DBE goals assigned, M/W/DBE utilization was higher in the Central Region (28.1%) than any other region followed by the Southeast Region (20.6%).

EXHIBIT 4X
 NON-GOAL ANALYSIS OF CONSTRUCTION SUBCONTRACTOR UTILIZATION
 BY REGION
 FUNDING MODAL: FHWA, FAA, AND FTA

REGION AND BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	TOTAL
	(\$)	(%)	(\$)	(%)	(\$)	(%)
CENTRAL REGION						
African Americans	\$36,689	0.18%	\$2,011,567	1.24%	\$2,048,256	1.12%
Alaska Native Corporations	\$88,630	0.44%	\$8,179,950	5.05%	\$8,268,580	4.54%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,899,291	14.45%	\$10,364,092	6.39%	\$13,263,383	7.28%
Asian Indian/Pacific Islanders	\$17,142	0.09%	\$0	0.00%	\$17,142	0.01%
Hispanic Americans	\$922,969	4.60%	\$6,446,624	3.98%	\$7,369,593	4.05%
Nonminority Women	\$1,973,760	9.84%	\$18,584,677	11.47%	\$20,558,437	11.29%
Total M/W/DBE Firms	\$5,938,481	29.60%	\$45,586,911	28.12%	\$51,525,392	28.29%
Non-M/W/DBE Firms	<u>\$14,127,340</u>	<u>70.40%</u>	<u>\$116,506,061</u>	<u>71.88%</u>	<u>\$130,633,401</u>	<u>71.71%</u>
TOTAL	\$20,065,821	100.00%	\$162,092,972	100.00%	\$182,158,793	100.00%
NORTHERN REGION						
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$1,181,873	0.92%	\$1,181,873	0.85%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$1,257,065	13.25%	\$6,953,357	5.40%	\$8,210,422	5.94%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$677,828	7.15%	\$6,270,999	4.87%	\$6,948,827	5.02%
Nonminority Women	\$2,070,128	21.82%	\$12,586,449	9.77%	\$14,656,577	10.60%
Total M/W/DBE Firms	\$4,005,020	42.22%	\$26,992,679	20.95%	\$30,997,699	22.41%
Non-M/W/DBE Firms	<u>\$5,480,654</u>	<u>57.78%</u>	<u>\$101,847,064</u>	<u>79.05%</u>	<u>\$107,327,718</u>	<u>77.59%</u>
TOTAL	\$9,485,674	100.00%	\$128,839,743	100.00%	\$138,325,417	100.00%
SOUTHEAST REGION						
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$4,964,527	53.56%	\$4,378,666	10.97%	\$9,343,193	18.99%
Asian Indian/Pacific Islanders	\$656,050	7.08%	\$364,872	0.91%	\$1,020,922	2.08%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$157,050	1.69%	\$3,469,595	8.69%	\$3,626,645	7.37%
Total M/W/DBE Firms	\$5,777,627	62.33%	\$8,213,133	20.57%	\$13,990,760	28.44%
Non-M/W/DBE Firms	<u>\$3,492,070</u>	<u>37.67%</u>	<u>\$31,717,718</u>	<u>79.43%</u>	<u>\$35,209,788</u>	<u>71.56%</u>
TOTAL	\$9,269,697	100.00%	\$39,930,850	100.00%	\$49,200,547	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Exhibit 4Y shows the utilization of subcontractors on FHWA-funded construction projects with DBE goals compared to projects with no DBE goals. M/W/DBE subcontractors received 75.4 percent of the dollars awarded on projects with DBE goals compared to 26 percent of the dollars awarded on projects with no DBE goals. In terms of dollars, the utilization of M/W/DBE subcontractors on projects without projects with no DBE goals, despite the lower percentages of M/W/DBEs on these projects. The utilization of M/W/DBE subcontractors on projects with and without DBE goals varies depending on the funding mode. Refer to Appendix A, Exhibits A-31 through A-34 for utilization on FAA- and FTA-funded projects.

EXHIBIT 4Y
 NON-GOAL ANALYSIS OF CONSTRUCTION SUBCONTRACTOR UTILIZATION
 BY BUSINESS OWNERSHIP CLASSIFICATION
 FUNDING MODAL: FHWA

BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	
	\$	Percent	\$	Percent	\$	Percent
M/W/DBE Firms						
African Americans	\$0	0.00%	\$1,889,656	0.81%	\$1,889,656	0.78%
Alaska Native Corporations	\$0	0.00%	\$5,139,478	2.20%	\$5,139,478	2.13%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,435,841	33.61%	\$13,609,397	5.82%	\$16,045,238	6.65%
Asian Indian/Pacific Islanders	\$656,050	9.05%	\$364,872	0.16%	\$1,020,922	0.42%
Hispanic Americans	\$677,828	9.35%	\$12,322,681	5.27%	\$13,000,509	5.39%
Nonminority Women	\$1,695,208	23.39%	\$27,508,177	11.76%	\$29,203,385	12.11%
Total M/W/DBE Firms	\$5,464,927	75.39%	\$60,834,261	26.00%	\$66,299,188	27.48%
Non-M/W/DBE Firms	\$1,783,485	24.61%	\$173,151,129	74.00%	\$174,934,614	72.52%
TOTAL	\$7,248,412	100.00%	\$233,985,390	100.00%	\$241,233,802	100.00%
DBE Certified Firms						
African Americans	\$0	0.00%	\$1,889,656	0.81%	\$1,889,656	0.78%
Alaska Native Corporations	\$0	0.00%	\$947,919	0.41%	\$947,919	0.39%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,435,841	33.61%	\$8,539,106	3.65%	\$10,974,947	4.55%
Asian Indian/Pacific Islanders	\$656,050	9.05%	\$364,872	0.16%	\$1,020,922	0.42%
Hispanic Americans	\$677,828	9.35%	\$9,353,981	4.00%	\$10,031,809	4.16%
Nonminority Women	\$1,530,208	21.11%	\$19,213,262	8.21%	\$20,743,470	8.60%
Total DBE Certified Firms	\$5,299,927	73.12%	\$40,308,796	17.23%	\$45,608,723	18.91%
Non-DBE Certified Firms	\$1,948,485	26.88%	\$193,676,594	82.77%	\$195,625,079	81.09%
TOTAL	\$7,248,412	100.00%	\$233,985,390	100.00%	\$241,233,802	100.00%

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: [Appendix A, Exhibits A-31 to A-34](#) presents corresponding analyses.

[Exhibit 4Z](#) compares the utilization of M/W/DBE and DBE certified subcontractors by region on FHWA-funded construction projects with DBE goals compared to projects with no DBE goals. The darker portion of the bar shows the utilization of M/W/DBE firms on projects with DBE goals. [Exhibit 4Z](#) shows in terms of region and total percentage of FHWA-funded construction subcontractor dollars awarded on projects with no DBE goals assigned, M/W/DBE utilization was higher in the Northern Region (26.8%) than any other region followed by the Central Region (26.5%). [Appendix A, Exhibits A-31 through A-34](#) presents the corresponding analyses by business ownership classification and region, as well as for FTA- and FAA-funded projects.

EXHIBIT 4Z
 NON-GOAL ANALYSIS OF CONSTRUCTION SUBCONTRACTOR UTILIZATION
 BY REGION
 FUNDING MODAL: FHWA

REGION AND BUSINESS OWNERSHIP CLASSIFICATION	DBE GOALS ASSIGNED		DBE GOALS NOT ASSIGNED		TOTAL	TOTAL
	(\$)	(%)	(\$)	(%)	(\$)	(%)
CENTRAL REGION						
African Americans	\$0	0.00%	\$1,889,656	1.60%	\$1,889,656	1.60%
Alaska Native Corporations	\$0	0.00%	\$3,957,605	3.35%	\$3,957,605	3.35%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$76,340	100.00%	\$4,179,639	3.54%	\$4,255,979	3.60%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$0	0.00%	\$6,101,641	5.16%	\$6,101,641	5.16%
Nonminority Women	\$0	0.00%	\$15,171,718	12.84%	\$15,171,718	12.83%
Total M/W/DBE Firms	\$76,340	100.00%	\$31,300,260	26.48%	\$31,376,600	26.53%
Non-M/W/DBE Firms	<u>\$0</u>	<u>0.00%</u>	<u>\$86,895,366</u>	<u>73.52%</u>	<u>\$86,895,366</u>	<u>73.47%</u>
TOTAL, CENTRAL REGION	\$76,340	100.00%	\$118,195,626	100.00%	\$118,271,966	100.00%
NORTHERN REGION						
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$1,181,873	1.37%	\$1,181,873	1.31%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$45,165	1.07%	\$5,220,173	6.07%	\$5,265,338	5.84%
Asian Indian/Pacific Islanders	\$0	0.00%	\$0	0.00%	\$0	0.00%
Hispanic Americans	\$677,828	16.13%	\$6,221,040	7.23%	\$6,898,868	7.65%
Nonminority Women	\$1,695,208	40.35%	\$10,414,261	12.11%	\$12,109,469	13.42%
Total M/W/DBE Firms	\$2,418,200	57.55%	\$23,037,348	26.78%	\$25,455,548	28.22%
Non-M/W/DBE Firms	<u>\$1,783,485</u>	<u>42.45%</u>	<u>\$62,977,725</u>	<u>73.22%</u>	<u>\$64,761,210</u>	<u>71.78%</u>
TOTAL, NORTHERN REGION	\$4,201,685	100.00%	\$86,015,073	100.00%	\$90,216,758	100.00%
SOUTHEAST REGION						
African Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Native Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
Alaska Tribal Corporations	\$0	0.00%	\$0	0.00%	\$0	0.00%
American Indians/Alaska Natives	\$2,314,337	77.91%	\$4,209,585	14.14%	\$6,523,921	19.92%
Asian Indian/Pacific Islanders	\$656,050	22.09%	\$364,872	1.23%	\$1,020,922	3.12%
Hispanic Americans	\$0	0.00%	\$0	0.00%	\$0	0.00%
Nonminority Women	\$0	0.00%	\$1,922,197	6.46%	\$1,922,197	5.87%
Total M/W/DBE Firms	\$2,970,387	100.00%	\$6,496,654	21.82%	\$9,467,041	28.91%
Non-M/W/DBE Firms	<u>\$0</u>	<u>0.00%</u>	<u>\$23,278,038</u>	<u>78.18%</u>	<u>\$23,278,038</u>	<u>71.09%</u>
TOTAL, SOUTHEAST REGION	\$2,970,387	100.00%	\$29,774,691	100.00%	\$32,745,078	100.00%
TOTAL	\$7,248,412		\$233,985,390		\$241,233,802	

Source: MGT developed a Master Contract Database based on contracts and Professional Services Agreements awarded by the ADOT&PF between October 1, 2006, and September 30, 2011.

Note: Appendix A, Exhibits A-31 through A-34 presents the corresponding analyses by business ownership classification and region, as well as for FTA- and FAA-funded projects.

6. CONCLUSION

This chapter presented the results of MGT's analyses on the market area and utilization of firms used on ADOT&PF prime contracts and subcontracts for construction, AELS, and non-AELS projects awarded between FFY2007 and FFY2011. As a result of the market area analyses, the state of Alaska was identified as the relevant market area.

As far as utilization, M/W/DBE firms on construction projects (all three funding modals combined) received 26.1 percent of the subcontract dollars. DBE certified firms received 18.1 percent of the subcontract award dollars. Among M/W/DBE firms and based on all three funding modals combined, all groups were utilized as construction subcontractors, with the exception of Alaska Tribal Corporations.

The results from the prime construction utilization analyses showed that M/W/DBE firms received 5.7 percent of the prime construction contracts (all three funding modals combined). DBE certified firms received less than 1 percent (0.33%) of the prime construction award dollars. Among M/W/DBE firms and based on all three funding modals combined, all groups were utilized as prime contractors, with the exception of Alaska Tribal Corporations and African American-owned firms. The prime utilization of M/W/DBE on AELS and non-AELS projects yielded a different result in that among M/W/DBE firms only Alaska Native Corporations and nonminority women-owned firms were utilized on AELS projects. None of the firms utilized were DBE certified firms. In terms of non-AELS projects, nonminority women-owned firms were the only M/W/DBE groups utilized. Similar to AELS projects, none of the firms utilized were DBE certified firms.

MGT further examined the prime contractor utilization of M/W/DBE subcontractors by examining ADOT&PF construction projects with DBE goals and without DBE goals. Of the \$369.7 million (based on all three funding modals combined) awarded, 89.5 percent of the construction subcontract dollars awarded were on projects without DBE goals. The utilization of subcontractors on construction projects (all three funding modals) with DBE goals compared to projects with no DBE goals. M/W/DBE subcontractors received 40.5 percent of the dollars awarded on projects with DBE goals compared to 24.4 percent of the dollars awarded on projects with no DBE goals. There was not much difference in the utilization of M/W/DBE firms, with the exception of American Indians/Alaska Natives-owned firms between projects with and without DBE goals.

**V *AVAILABILITY AND DISPARITY
ANALYSES***

CHAPTER V: AVAILABILITY AND DISPARITY ANALYSES

CHAPTER SECTIONS

1. Chapter Definitions
2. Availability Analysis
3. Disparity Analysis

Chapter V presents the results of MGT's analyses on availability and disparity on ADOT&PF transportation construction, AELS, and non-AELS projects awarded during the study period.

To understand the analyses presented in this chapter, it is important to provide definitions to key terms discussed in this chapter. The following section presents these definitions.

I. CHAPTER DEFINITIONS

Availability Analysis Methodology. There is no single approach to estimating the availability of firms that has been adopted by the post-*Croson* case law. As a whole, the case law has emphasized firms being qualified, ready, willing, and able to pursue work with an agency. Therefore, MGT staff analyzed the availability of firms using the following data sources: custom census, vendor data, and ADOT&PF's planholders' list. The following explains how each data source was used to measure the estimates of available firms:

- ♦ **Custom Census.** Availability estimates for construction at the subcontractor level were based on firms represented in the study's custom census, as well as firms represented in the prime construction availability. The following presents more information on custom census.

Some cases have allowed custom census to calculate the availability of firms using Dun & Bradstreet. Dun & Bradstreet is a current data source that contains individual firms, firm revenue, number of employees, and specific areas of work. It should be noted that there are deficiencies to Dun & Bradstreet, which include:

- No racial, ethnic, and gender information.
- No indication of whether a firm is interested (or willing) to work on ADOT&PF projects.
- No indication of whether a firm primarily works on projects as a prime contractor or subcontractor.
- No indication of whether a firm has a professional license in the state of Alaska.

MGT staff addressed these deficiencies by first pulling a random sample of firms from Dun & Bradstreet. The sample was limited to firms located in the state of Alaska and identified as providing construction services.¹ Once the sample was pulled, MGT staff cross referenced these firms with the state of Alaska's Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing database. Once

¹ These services were identified based on the six-digit North American Industry Classification System (NAICS) codes provided in the Duns & Bradstreet data.

this process was completed, the remaining deficiencies were addressed by conducting a short survey. Firms were asked:

- Ethnicity, race, and gender information.
- Had they bid or considered bidding on ADOT&PF projects, which indicates the firm’s interest/willingness.
- When bidding on projects (not limited ADOT&PF projects), if they primarily bid as prime contractor, subcontractor, or both.

The survey questionnaires used in this process are presented in **Appendices B and C**.

- ◆ **Vendor Data.** Vendor data was used to calculate the availability estimates for prime consultants² on AELS and non-AELS projects. There is case law where studies estimating availability based on vendor data have been upheld in federal court.³ Vendor data was extracted from ADOT&PF’s BizTrak data management system.
- ◆ **Planholders’ List.** ADOT&PF’s planholders’ list was used to calculate the availability of prime contractors on construction projects. This availability analysis was based on firms located in the state of Alaska that were identified as general contractors that had obtained plans/proposals on construction projects awarded during the study period.

Disparity Analysis Methodology. Disparity, in this context, is the analysis of the differences between the utilization of minorities- and women-owned firms and the availability of those firms. As a result, MGT calculated disparity indices to examine whether minority- and woman-owned firms received a proportional share of dollars based on the availability of minorities- and women-owned firms located in the study’s relevant market area, which is the state of Alaska. The following explains MGT’s disparity methodology in more detail.

MGT pioneered the use of disparity indices as a means of quantifying the disparity in utilization comparative to availability. The use of disparity indices for such calculations is supported by several post-*Croson* cases, most notably *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*.⁴ Although a variety of similar indices could be utilized, MGT’s standard for choosing a particular index methodology is that it must yield a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within minorities- and women-owned firms can be assessed with reference to the utilization of nonminority- and women-owned firms. The following formula shows the ratio of the percentage of utilization to the percentage of availability multiplied by 100:

$$(1) \text{ Disparity Index} = \frac{\%Um_1p_1}{\%Am_1p_1} \times 100$$

Where: Um_1p_1 = utilization of minorities- and women-owned firms₁ for procurement₁
 Am_1p_1 = availability of minorities- and women-owned firms₁ for procurement₁

Due to the mathematical properties involved in the calculations, a disparity index value of zero (0.00) indicates absolutely no utilization and, therefore, absolute disparity. An index of 100 indicates that

² Availability estimates were not calculated for subconsultants on AELS and non-AELS projects, since the total dollars awarded during the study period were less than \$1 million.

³*H.B. Rowe v. North Carolina DOT*, 589 FSupp.2d 587 (ED NC 2008).

⁴*Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 91 F 3d at 603.

utilization is perfectly proportionate to availability, therefore indicating the absence of disparity (that is, all things being equal). Generally, firms are considered underutilized if the disparity indices are less than 100, and overutilized if the indices are above 100.

Since there is no standardized measurement to evaluate the levels of underutilization or overutilization within a procurement context, MGT's methodology to measure disparity, if disparity is found, is based on the Equal Employment Opportunity Commission's (EEOC) "80 percent rule."⁵ In the employment discrimination framework, an employment disparity ratio below 80 indicates a "substantial disparity." The Supreme Court has accepted the use of the "80 percent rule" in *Connecticut v. Teal (Teal)*, 457 U.S. 440 (1982).⁶ Therefore, firms are considered substantially underutilized (substantial disparity) if the disparity indices is 80 or less.

2. AVAILABILITY ANALYSIS

Similar to [Chapter IV](#), the analysis of subcontracting is presented first because there must be a factual basis in order to establish M/W/DBE subcontracting goals. As noted in [Section 1, Chapter Definitions](#), availability estimates were not calculated for subconsultants on AELS and non-AELS projects as the total dollars awarded during the study period were less than \$1 million. The following presents the results of construction subcontractor availability. In addition, as mentioned in [Chapter IV](#), courts have accepted disparity studies based on race, ethnicity, and gender (M/W/DBE group) as opposed to DBE certification status. Therefore, MGT did not separately calculate availability for DBE certified firms.⁷ Refer to [Appendix M](#) for overall methodology for the overall annual DBE goals.

MGT used custom census to estimate the availability of construction subcontractors. [Exhibit 5A](#) presents the results by the three ADOT&PF regions for each M/W/DBE group. Overall, M/W/DBE availability for construction subcontractors was close to 19 percent. In terms of regions, M/W/DBE availability was higher in the Central Region (20.1%) than any other region. M/W/DBE availability was lowest in the Southeast Region (12.6%).

⁵ Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*.

⁶ In *Teal* and other affirmative action cases, the terms "adverse impact," "disparate impact," and "discriminatory impact" are used interchangeably to characterize values of 80 and below.

⁷ Results on the utilization of DBE certified firms are presented in [Chapter IV](#) and [Appendix A](#).

EXHIBIT 5A
 AVAILABILITY ANALYSIS OF CONSTRUCTION SUBCONTRACTORS
 BY REGION AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	#	Percent	#	Percent	#	Percent	#	Percent
M/W/DBE Firms								
African Americans	6	1.26%	0	0.00%	0	0.00%	6	0.85%
Alaska Native Corporations	19	3.98%	5	3.50%	0	0.00%	24	3.39%
Alaska Tribal Corporations	1	0.21%	0	0.00%	0	0.00%	1	0.14%
American Indians/Alaska Natives	21	4.40%	12	8.39%	7	8.05%	40	5.66%
Asian Indian/Pacific Islanders	3	0.63%	1	0.70%	1	1.15%	5	0.71%
Hispanic Americans	18	3.77%	1	0.70%	1	1.15%	20	2.83%
Nonminority Women	28	5.87%	8	5.59%	2	2.30%	38	5.37%
Total M/W/DBE Firms	96	20.13%	27	18.88%	11	12.64%	134	18.95%
Non-M/W/DBE Firms	381	79.87%	116	81.12%	76	87.36%	573	81.05%
TOTAL	477	100.00%	143	100.00%	87	100.00%	707	100.00%

Source: MGT developed a Master Availability Database based on custom census, AKDOT&PF vendor data, and AKDOT&PF planholders' list.

MGT used ADOT&PF's planholders' list to estimate the availability of construction prime contractors. **Exhibit 5B** presents the results by the three ADOT&PF regions and each M/W/DBE group. Overall, M/W/DBE availability for prime construction firms was close to 16 percent. In terms of regions, M/W/DBE availability was higher in the Northern Region (20%) than any other region. M/W/DBE availability was lowest in the Southeast Region (11.8%).

EXHIBIT 5B
 AVAILABILITY ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS
 BY REGION AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	#	Percent	#	Percent	#	Percent	#	Percent
M/W/DBE Firms								
African Americans	1	0.50%	0	0.00%	0	0.00%	1	0.32%
Alaska Native Corporations	14	6.93%	1	1.67%	0	0.00%	15	4.79%
Alaska Tribal Corporations	1	0.50%	0	0.00%	0	0.00%	1	0.32%
American Indians/Alaska Natives	6	2.97%	6	10.00%	3	5.88%	15	4.79%
Asian Indian/Pacific Islanders	0	0.00%	1	1.67%	1	1.96%	2	0.64%
Hispanic Americans	4	1.98%	2	3.33%	1	1.96%	7	2.24%
Nonminority Women	6	2.97%	2	3.33%	1	1.96%	9	2.88%
Total M/W/DBE Firms	32	15.84%	12	20.00%	6	11.76%	50	15.97%
Non-M/W/DBE Firms	170	84.16%	48	80.00%	45	88.24%	263	84.03%
TOTAL	202	100.00%	60	100.00%	51	100.00%	313	100.00%

Source: MGT developed a Master Availability Database based on custom census, AKDOT&PF vendor data, and AKDOT&PF planholders' list.

MGT used ADOT&PF's vendor data to estimate the separate availability of AELS and non-AELS prime consultants. **Exhibit 5C** presents the AELS results by the three ADOT&PF regions and each M/W/DBE group. Overall, M/W/DBE availability for prime AELS firms was 13 percent. In terms of regions, M/W/DBE availability was higher in the Central Region (15.8%) than any other region. M/W/DBE availability was lowest in the Southeast Region (5.1%).

EXHIBIT 5C
 AVAILABILITY ANALYSIS OF AELS PRIME CONSULTANTS
 BY REGION AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	#	Percent	#	Percent	#	Percent	#	Percent
M/W/DBE Firms								
African Americans	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Alaska Native Corporations	5	3.03%	2	4.08%	0	0.00%	7	2.77%
Alaska Tribal Corporations	0	0.00%	0	0.00%	0	0.00%	0	0.00%
American Indians/Alaska Natives	10	6.06%	0	0.00%	0	0.00%	10	3.95%
Asian Indian/Pacific Islanders	1	0.61%	0	0.00%	1	2.56%	2	0.79%
Hispanic Americans	2	1.21%	1	2.04%	0	0.00%	3	1.19%
Nonminority Women	8	4.85%	2	4.08%	1	2.56%	11	4.35%
Total M/W/DBE Firms	26	15.76%	5	10.20%	2	5.13%	33	13.04%
Non-M/W/DBE Firms	139	84.24%	44	89.80%	37	94.87%	220	86.96%
TOTAL	165	100.00%	49	100.00%	39	100.00%	253	100.00%

Source: MGT developed a Master Availability Database based on custom census, AKDOT&PF vendor data, and AKDOT&PF planholders' list.

Exhibit 5D presents the non-AELS results by the three ADOT&PF regions and each M/W/DBE group. Overall, M/W/DBE availability for prime non-AELS firms was 21.4 percent. In terms of regions, M/W/DBE availability was higher in the Southeast Region (25%) than any other region. M/W/DBE availability was lowest in the Northern Region (14.3%).

EXHIBIT 5D
 AVAILABILITY ANALYSIS OF NON-AELS PRIME CONSULTANTS
 BY REGION AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	CENTRAL REGION		NORTHERN REGION		SOUTHEAST REGION		STATEWIDE, TOTAL	
	#	Percent	#	Percent	#	Percent	#	Percent
M/W/DBE Firms								
African Americans	1	1.96%	0	0.00%	0	0.00%	1	1.19%
Alaska Native Corporations	3	5.88%	1	4.76%	1	8.33%	5	5.95%
Alaska Tribal Corporations	0	0.00%	0	0.00%	0	0.00%	0	0.00%
American Indians/Alaska Natives	2	3.92%	0	0.00%	0	0.00%	2	2.38%
Asian Indian/Pacific Islanders	1	1.96%	0	0.00%	0	0.00%	1	1.19%
Hispanic Americans	2	3.92%	0	0.00%	0	0.00%	2	2.38%
Nonminority Women	3	5.88%	2	9.52%	2	16.67%	7	8.33%
Total M/W/DBE Firms	12	23.53%	3	14.29%	3	25.00%	18	21.43%
Non-M/W/DBE Firms	39	76.47%	18	85.71%	9	75.00%	66	78.57%
TOTAL	51	100.00%	21	100.00%	12	100.00%	84	100.00%

Source: MGT developed a Master Availability Database based on custom census, AKDOT&PF vendor data, and AKDOT&PF planholders' list.

3. DISPARITY ANALYSIS

The next series of exhibits present a summary of the disparity results. Similar to MGT's utilization analyses, disparity was examined several ways including statewide, by the ADOT&PF three regions, by each year of the study period, as well as by U.S. DOT funding modals (combined and separately). The detailed disparity analysis results are presented in Appendix A. For instance, Exhibit A-41 in Appendix A presents the disparity results for FHWA-funded construction subcontracts by year and M/W/DBE group.

Exhibit 5E presents the disparity summary results for construction subcontracts (based on all three funding modals). The bottom portion of the exhibit presents the corresponding utilization results for

DBE certified firms. Since availability and disparity results were not calculated on DBE certified firms, and since calculating availability and disparity strictly based off DBE certification is not a justification courts have accepted for implementing race-conscious programs, this section of the exhibit has been shaded. The disparity is based on the racial, ethnic, and gender classification regardless of DBE certification status. The number of individual firms, number of subcontracts, and percentage of dollars were based on the utilization results.

Overall, M/W/DBE firms (disparity index 137.7) were overutilized as subcontractors on construction projects (all three funding modals). Among the M/W/DBE groups, all M/W/DBE firms were underutilized with the exception of American Indian/Alaska Native-, Hispanic American-, and nonminority women-owned firms. Of the \$14.3 million that was awarded to Hispanic American-owned firms construction projects (all three funding modals), \$11.6 million went to two Hispanic American-owned firms, one of the firms is no longer in business and the other firm was acquired by a non-DBE certified firm. The corresponding summary results for construction subcontracting by each funding modal is presented in **Appendix A, Exhibits A-41** (FHWA-funded), **A-44** (FAA-funded), and **A-48** (FTA-funded).

EXHIBIT 5E
DISPARITY ANALYSIS OF CONSTRUCTION SUBCONTRACTORS
FUNDING MODALS: FHWA, FTA, AND FAA

BUSINESS OWNERSHIP CLASSIFICATION	# of Individual Firms	# of Subcontracts	Percent of \$	Percent of Available Firms	Disparate Index	Disparate Impact of Utilization	
M/W/DBE Firms							
African Americans	4	11	0.55%	0.85%	65.29	Underutilization	*
Alaska Native Corporations	6	35	2.56%	3.39%	75.31	Underutilization	*
Alaska Tribal Corporations	0	0	0.00%	0.14%	0.00	Underutilization	*
American Indians/Alaska Natives	28	128	8.34%	5.66%	147.34	Overutilization	
Asian Indian/Pacific Islanders	2	3	0.28%	0.71%	39.70	Underutilization	*
Hispanic Americans	12	102	3.87%	2.83%	136.92	Overutilization	
Nonminority Women	24	318	10.51%	5.37%	195.48	Overutilization	
Total M/W/DBE Firms	76	597	26.11%	18.95%	137.74	Overutilization	
Non-M/W/DBE Firms	372	1,367	73.89%	81.05%	91.17	Underutilization	
DBE Certified Firms							
African Americans	4	11	0.55%				
Alaska Native Corporations	3	8	0.28%				
Alaska Tribal Corporations	0	0	0.00%				
American Indians/Alaska Natives	21	109	6.71%				
Asian Indian/Pacific Islanders	2	3	0.28%				
Hispanic Americans	8	59	3.02%				
Nonminority Women	14	230	7.26%				
Total DBE Certified Firms	52	420	18.11%				
Non-DBE Certified Firms	320	1,544	81.89%				

Source: MGT developed a Master Contract and Availability Database for the study period.

Number of Individual Firms is taken from the utilization analysis and is based on the unique count of firms.

Number of subcontracts is taken from the utilization and is based on the number of contracts awarded.

Percentage of dollars is taken from the utilization analysis.

Percentage of available firms is taken from the availability estimates.

Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.

* indicates a substantial level of disparity, which is a disparity index below 80.00.

Note: The corresponding summary results for construction subcontracting by each funding modal is presented in **Appendix A, Exhibits A-41** (FHWA-funded), **A-44** (FAA-funded), and **A-48** (FTA-funded).

Exhibit 5F presents the disparity summary results for M/W/DBE firms on FHWA-funded construction subcontracts. Overall, M/W/DBE firms (disparity index of 145) were overutilized. Nonminority women-firms (disparity index of 225), American Indians/Alaska Native-owned firms (disparity index of 118) and Hispanic American-owned firms (disparity index of 191) were overutilized. Of the \$13 million that was awarded to Hispanic American-owned firms on FHWA-funded construction subcontracts, \$11 million went to two Hispanic American-owned firms, one of the firms is no longer in business and the other firm was acquired by a non-DBE certified firm.

Alaska Native Corporations (disparity index of 63), Asian Indian/Pacific Islander-owned firms (disparity index of 60), and African American-owned firms (disparity index of 92) showed underutilization/disparity. The corresponding disparity results on FHWA-funded construction subcontracts by summary, year and region is presented in **Appendix A, Exhibit A-41** through **Exhibit A-43**. **Exhibit A-44** through **Exhibit A-49** presents the corresponding disparity results on FAA- and FTA-funded construction subcontracts.

EXHIBIT 5F
DISPARITY ANALYSIS OF CONSTRUCTION SUBCONTRACTORS
FUNDING MODAL: FHWA

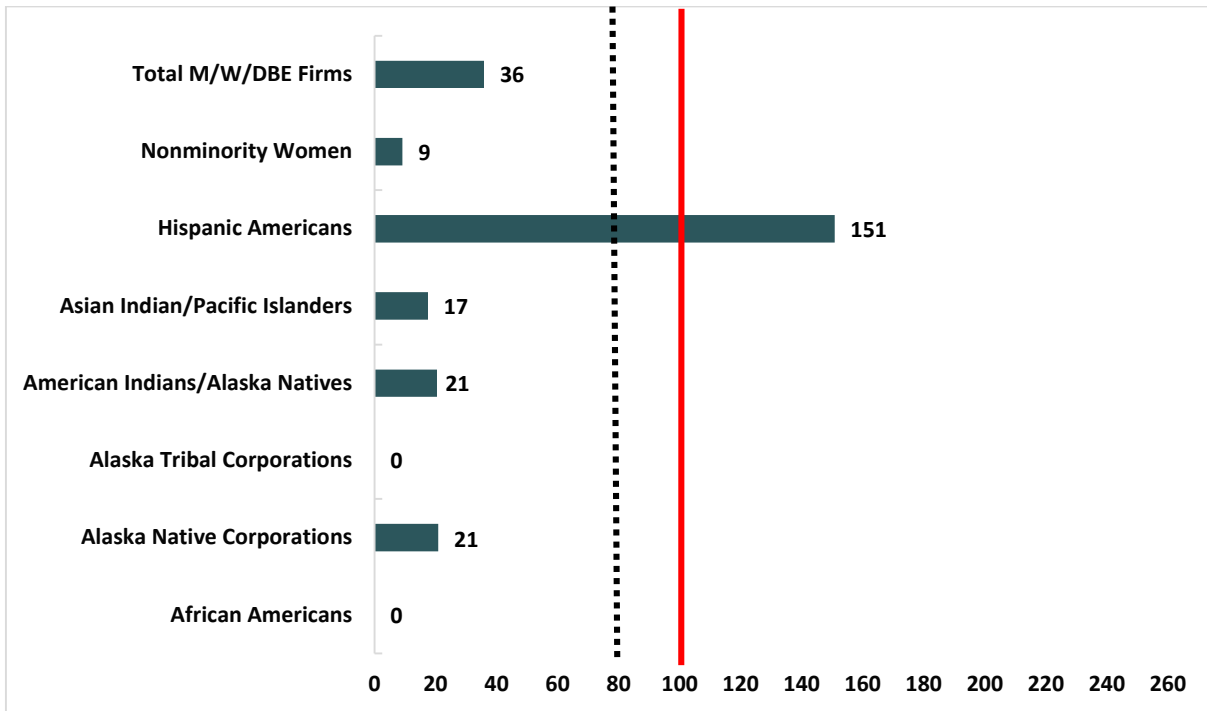


Source: MGT developed a Master Contract and Availability Database for the study period.
 Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.
 A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.
 A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.
 The disparity indices have been rounded.
 Note: The corresponding disparity results on FHWA-funded construction subcontracts by summary, year and region is presented in **Appendix A, Exhibit A-41** through **Exhibit A-43**. **Exhibit A-44** through **Exhibit A-49** presents the corresponding disparity results on FAA- and FTA-funded construction subcontracts.

Exhibit 5G presents the disparity summary results for M/W/DBE firms on construction prime contracts (based on all three funding modes). Overall, M/W/DBE firms (disparity index of 36) were substantially underutilized (substantial disparity). However, Hispanic American-owned firms (disparity index of 151)

were overutilized. Of the \$63.9 million that was awarded to Hispanic American-owned firms on construction prime contracts (based on all three funding modals), \$51.5 million went to three Hispanic American-owned firms, of which one of the firms is no longer eligible for DBE certification, one firm is no longer in business, and one firm was acquired by a non-DBE certified firm. All other M/W/DBE groups were substantially underutilized (substantial disparity).

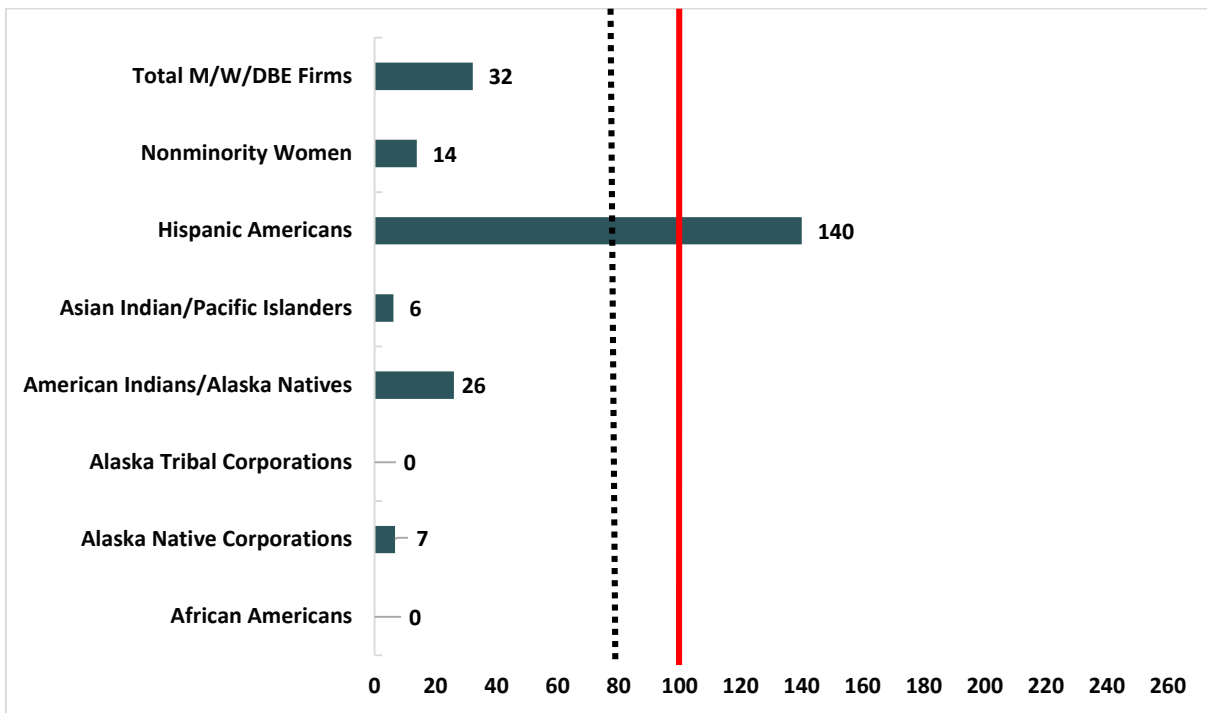
EXHIBIT 5G
DISPARITY ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA



Source: MGT developed a Master Contract and Availability Database for the study period.
 Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.
 A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.
 A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.
 The disparity indices have been rounded.

Exhibit 5H presents the disparity summary results for M/W/DBE firms on FHWA-funded construction prime contracts. Overall, M/W/DBE firms (disparity index of 32) were substantially underutilized (substantial disparity). Among M/W/DBE groups, Hispanic American-owned firms (disparity index of 140) was the only group overutilized. About \$34 million was awarded to Hispanic American-owned firms on FHWA-funded construction prime contracts, \$25.9 million went to three Hispanic American-owned firms, of which one of the firms is no longer eligible for DBE certification, one firm is no longer in business, and one firm was acquired by a non-DBE certified firm. All other M/W/DBE groups were substantially underutilized (substantial disparity). The corresponding disparity results on FHWA-funded construction prime contracts by summary, year and region is presented in **Appendix A, Exhibit A-50** through **Exhibit A-52**. **Exhibit A-53** through **Exhibit A-58** presents the corresponding disparity results on FAA- and FTA-funded prime projects.

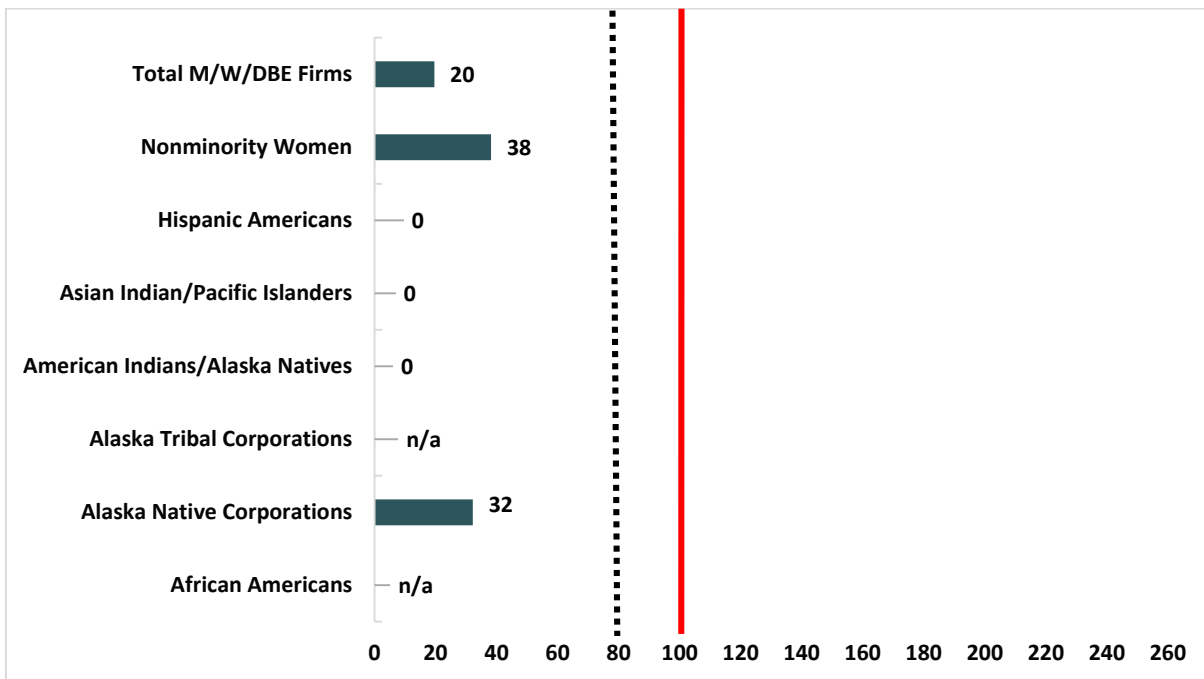
EXHIBIT 5H
DISPARITY ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS
FUNDING MODAL: FHWA



Source: MGT developed a Master Contract and Availability Database for the study period.
 Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.
 A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.
 A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.
 The disparity indices have been rounded.
 Note: The corresponding disparity results on FHWA-funded construction prime contracts by summary, year and region is presented in [Appendix A, Exhibit A-50](#) through [Exhibit A-52](#). [Exhibit A-53](#) through [Exhibit A-58](#) presents the corresponding disparity results on FAA- and FTA-funded prime projects.

Exhibit 5I presents the disparity summary results for M/W/DBE firms on AELS prime projects (based on all three funding modals). Overall, M/W/DBE firms (disparity index of 20) were substantially underutilized (substantial disparity).

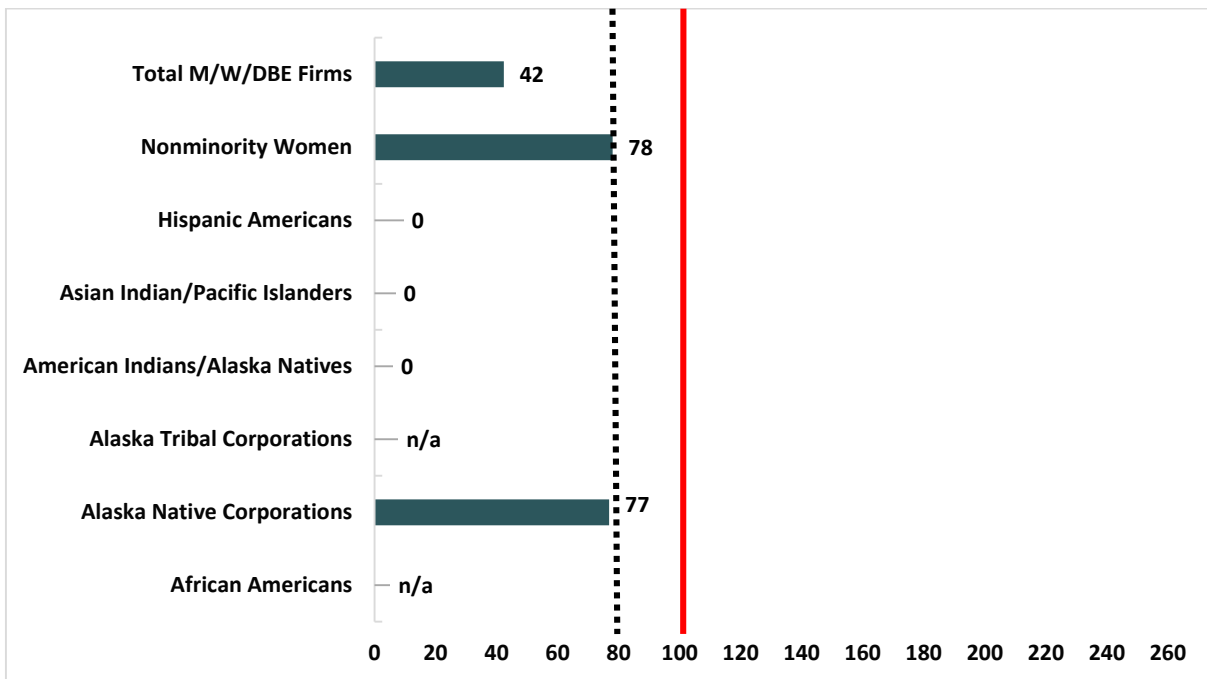
EXHIBIT 5I
DISPARITY ANALYSIS OF AELS PRIME CONSULTANTS
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA



Source: MGT developed a Master Contract and Availability Database for the study period.
 Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.
 A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.
 A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.
 The disparity indices have been rounded.
 n/a denotes constraint of division by zero. This occurred because there was no identified availability estimates in this specific business category and M/W/DBE group. However, the existence of disparity can be inferred due to the evidence of low utilization results.

Exhibit 5J presents the disparity summary results for M/W/DBE firms on FHWA-funded AELS prime projects. Overall, M/W/DBE firms (disparity index of 42) were substantially underutilized (substantial disparity). Among the M/W/DBE groups utilized, nonminority women-owned firms (disparity index of 78) and Alaska Native Corporations (disparity index of 77) were substantially underutilized. The corresponding disparity results on FHWA-, FAA-, and FTA-funded AELS prime projects by summary, year and region is presented in **Appendix A, Exhibit A-59** through **Exhibit A-67**.

EXHIBIT 5J
DISPARITY ANALYSIS OF AELS PRIME CONSULTANTS
FUNDING MODAL: FHWA



Source: MGT developed a Master Contract and Availability Database for the study period.

Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.

A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.

A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.

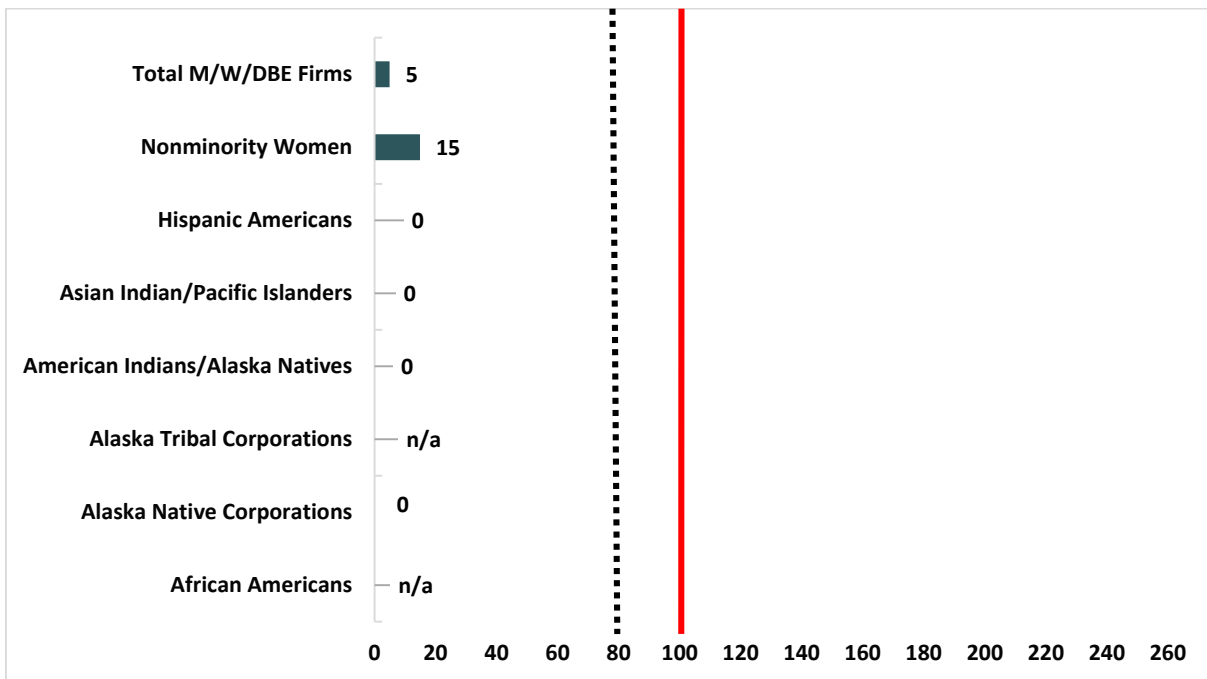
The disparity indices have been rounded.

Note: The corresponding disparity results on FHWA-, FAA-, and FTA-funded AELS prime projects by summary, year and region is presented in [Appendix A, Exhibit A-59](#) through [Exhibit A-67](#).

n/a denotes constraint of division by zero. This occurred because there was no identified availability estimates in this specific business category and M/W/DBE group. However, the existence of disparity can be inferred due to the evidence of low utilization results.

Exhibit 5K presents the disparity summary results for M/W/DBE firms on non-AELS prime projects (all three funding modals combined). Overall, M/W/DBE firms (disparity index of 5) were substantially underutilized (substantial disparity).

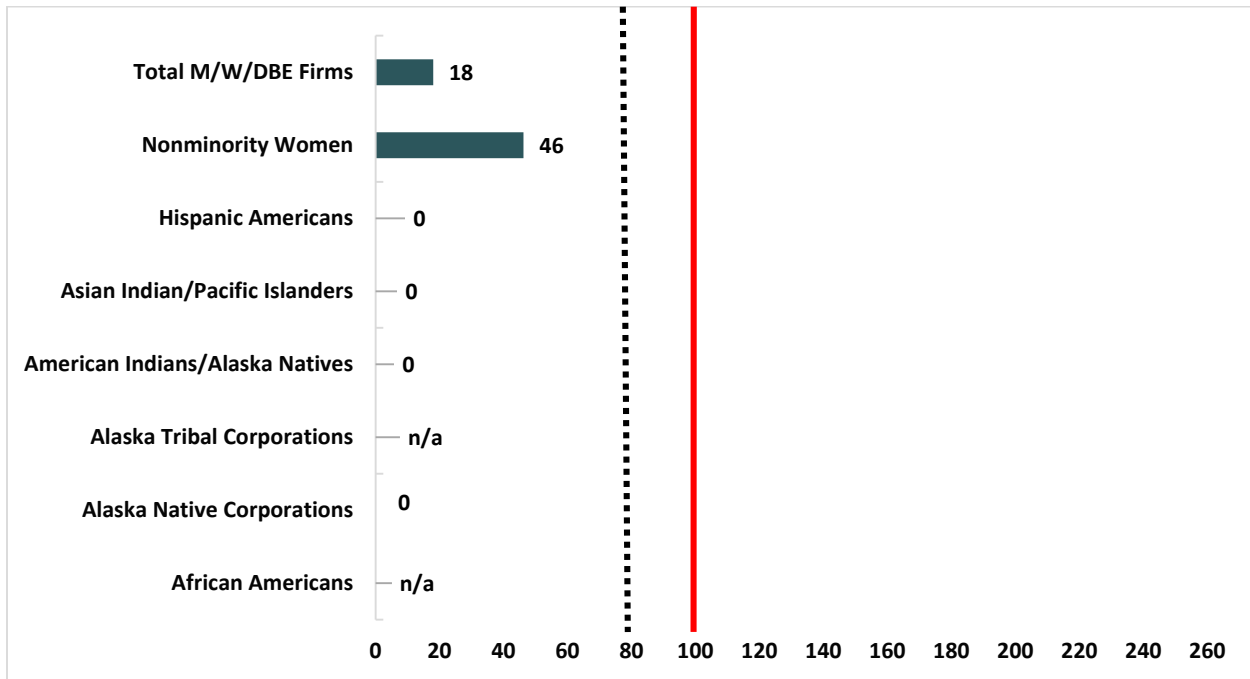
EXHIBIT 5K
DISPARITY ANALYSIS OF NON-AELS PRIME CONSULTANTS
FUNDING MODALS COMBINED: FHWA, FTA, AND FAA



Source: MGT developed a Master Contract and Availability Database for the study period.
 Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.
 A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.
 A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.
 The disparity indices have been rounded.
 n/a denotes constraint of division by zero. This occurred because there was no identified availability estimates in this specific business category and M/W/DBE group. However, the existence of disparity can be inferred due to the evidence of low utilization results.

Exhibit 5L presents the disparity summary results for M/W/DBE firms on FHWA-funded non-AELS prime projects. Overall, M/W/DBE firms (disparity index of 18) were substantially underutilized (substantial disparity). Among the M/W/DBE groups utilized, nonminority women-owned firms (disparity index of 46) were substantially underutilized. The corresponding disparity results on FHWA-, FAA-, and FTA-funded non-AELS prime projects by summary, year and region is presented in **Appendix A, Exhibit A-68** through **Exhibit A-76**.

EXHIBIT 5L
DISPARITY ANALYSIS OF NON-AELS PRIME CONSULTANTS
FUNDING MODAL: FHWA



Source: MGT developed a Master Contract and Availability Database for the study period.

Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.

A dotted line is drawn at 80.00. A disparity index below 80.00 indicates a substantial level of disparity.

A solid red line is drawn at 100.00. A disparity index greater than 100.00 indicates overutilization.

The disparity indices have been rounded.

Note: The corresponding disparity results on FHWA-, FAA-, and FTA-funded non-AELS prime projects by summary, year and region is presented in [Appendix A, Exhibit A-68](#) through [Exhibit A-76](#).

n/a denotes constraint of division by zero. This occurred because there was no identified availability estimates in this specific business category and M/W/DBE group. However, the existence of disparity can be inferred due to the evidence of low utilization results.

VI ANECDOTAL ANALYSIS

CHAPTER VI: ANECDOTAL ANALYSIS

CHAPTER SECTIONS

1. Methodology
2. Demographics
3. Barriers to Doing Business with Alaska Department of Transportation & Public Facilities
4. DBE Program
5. Prime Contractor Practices
6. Access to Capital
7. Discrimination and Disparate Treatment
8. Stakeholder Interviews
9. Suggested Remedies from Anecdotal Participants
10. Conclusions

The following sections present MGT of America's (MGT) approach to collecting anecdotal information, the methods employed, and the quantitative and qualitative results of the data collected.

Anecdotal evidence must provide support for statistical findings of disparity and help to explain and lend credence to statistical results as discussed in **Chapter II: Legal Review**. MGT used a combination of surveys, focus groups, public hearings, and personal interviews to collect anecdotal information and to identify issues that were common to businesses in the market area during the study period of October 1, 2006, to September 30, 2011.

Personal interviews, public hearings, and focus group responses were edited for grammar. Otherwise, responses were unfiltered and unedited. It should be noted that the anecdotal responses are based solely on the perceptions and opinions of individuals who provided input during collection of anecdotal information. The evidentiary weight of these opinions depends on how much they are corroborated by statements of others and the quantitative data in the report.

I. METHODOLOGY

The U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989) (*Croson*) provided the approach to collecting and analyzing anecdotal information for this study. Specifically, race-conscious programs must be supported by strong documentation of discrimination, including evidentiary findings that go beyond the demographics of a community. Anecdotal information can bolster the quantitative analyses of contract expenditures to explain whether or not minority business creation, growth, and retention are negatively affected by discrimination. In *Croson*, the Court held that anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such information can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to minority- and women-owned business enterprise (M/WBE) participation in contract opportunities.

MGT's anecdotal methodology utilized a multipronged approach that included observations, interviews, data collected during focus groups, survey responses, and other anecdotal data collection methods. The collection and analysis of anecdotal data is used in conjunction with other research tools to provide

context and to help explain findings based on quantitative data analysis. Unlike conclusions derived from other types of analysis in this report, the conclusions derived from anecdotal analysis do not rely solely on quantitative data. Anecdotal analysis also utilizes qualitative data to describe the context of the examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate.

MGT's experience conducting disparity studies has shown that multiple methods of anecdotal data collection provide more comprehensive information than methodologies using a single-pronged approach. In conjunction with the quantitative data, MGT was also able to draw inferences from this data as to the prevalence of obstacles perceived as limiting the participation of DBEs in ADOT&PF's procurement transactions.

DBE and non-DBE primes and subcontractors were randomly selected from ADOT&PF's Master Vendor Database (discussed in [Chapter IV: Market Area and Utilization Analyses](#)) to ensure the validity and integrity of anecdotal data collection. Random selections were made for each anecdotal activity to ensure a broad cross section of construction, architecture, engineering, and land surveyors (AELS), and non-AELS firms. From the samples pulled, DBEs and non-DBEs were contacted to participate in focus groups, surveys, or personal interviews. A breakdown of participants is discussed within this chapter.

SURVEY OF VENDORS

The survey of vendors gathered information on business ownership, work performed and/or bid with ADOT&PF, work bid and/or performed in the private sector, and barriers, perceived or real, that prevented firms from doing business with ADOT&PF during the study period. During the months of August 2013 and September 2013, businesses listed in the master vendor database were surveyed to solicit information about their firms and experiences with ADOT&PF. MGT succeeded in collecting data in proportion to the distribution of DBEs and non-DBEs in the state. Oppenheim Research, a Florida-based woman-owned business research firm, administered a controlled survey using the [Appendix F – Survey of Vendors Instrument](#) which resulted in 393 completed surveys with owners and representatives. Throughout this chapter several charts detail selected survey results. (See [Appendix G – Survey of Vendors Results](#) for the complete survey of vendor results and explanation of the percentage calculations.)

Disparity study surveys are commonly plagued by sample size limitations, especially when attempting to gather a representative sample from minority business populations where low minority numbers pose problems. For example, African American, Asian Indian/Pacific Islander, and Hispanic American business participation was very limited in this case because there was an insufficient number of identified firms to permit a valid and representative sample. This problem is compounded when analyses are stratified further by business type. Insufficient sample sizes can pose problems for the statistical confidence of the results. Although MGT's goal is to report data that can satisfy the 95 percent confidence level, this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard.

FOCUS GROUPS AND PUBLIC HEARINGS

MGT facilitated two focus groups: one with prime contractors and one with subcontractors. Donaldson Enterprises, a Native American DBE firm, provided administrative support, coordination, and management of the focus groups. The prime contractor's focus group was held on March 12, 2013, at

the Associated General Contractors (AGC) conference room at 8005 Schoon Street in Anchorage. The subcontractor's focus group was held on March 15, 2013, at the Anchorage Public Library at 3600 Denali Street in Anchorage. Participants for each focus group were randomly selected using ADOT&PF's master vendor database. The focus groups discussions were voice recorded after all participants agreed to be recorded. During the focus group sessions, participants completed a brief questionnaire (**Appendix J-a – Focus Group Survey – Primes** and **Appendix J-b – Focus Groups Survey – Subcontractors**) to capture basic demographic information and the business capacity of the group. MGT used **Appendix I-a – Focus Group Guide – Primes** and **Appendix I-b – Focus Group Guide – Subcontractors** to facilitate and guide the discussion with participants.

MGT conducted three public hearings with business owners, individuals, and representatives on:

- ◆ March 11, 2013, at the Centennial Hall Convention Center – Hickel Room at 101 Egan Dr. in Juneau.
- ◆ March 13, 2013, at the Carlson Center – The Prow Room at 2010 2nd Avenue in Fairbanks.
- ◆ March 14, 2013, at the Anchorage Public Library at 3600 Denali Street in Anchorage.

Firms, DBEs included, that have done business with or were interested in doing business with ADOT&PF were invited to attend. The public hearings were advertised on ADOT&PF's website and emailed to vendors in ADOT&PF's database using **Appendix E – Public Hearing Notice**. The Notice was also distributed to known business associations and trade organizations in the market area. Donaldson Enterprises provided administrative support and event coordination of hearings. The public hearings were transcribed in each location by a local court reporting service.

PERSONAL INTERVIEWS

Personal interviews were conducted with primes and subcontractors, both DBE and non-DBE, during August and September 2013. To obtain interviewees, firms not selected for other anecdotal activities were randomly selected from ADOT&PF's master vendor database then emailed, telephoned, or faxed confirmation letters after agreeing to be interviewed. The personal interviews gathered information regarding the firm's primary line of business; ethnicity and education/training background of the owner; business history; size and gross revenues during selected calendar and/or fiscal years; and the firms' experiences in conducting or attempting to conduct business with ADOT&PF, both directly as a prime and/or as a subcontractor. While the interviewer or facilitator used an interview guide to solicit input from participants, the interviews provided latitude for additional information gathering on issues unique to the respondents' experiences. **Appendices H-a: Personal Interview Guide – Primes** and **H-b: Personal Interview Guide – Subcontractors** were used and included questions designed to establish a profile for each business. Additionally, MGT asked questions related to experiences with the DBE program, and instances of disparate treatment and/or discrimination experienced or perceived by the firm while conducting or attempting to conduct business with ADOT&PF. Donaldson Enterprises conducted the prime and subcontractor interviews. Donaldson Enterprises made no attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary. At the conclusion of the interviews, each participant was asked to sign an affidavit attesting that their responses were given freely and were true and accurate reflections of their experiences with ADOT&PF.

2. DEMOGRAPHICS

The demographic characteristics of the survey of vendors, focus group, public hearing, and personal interview participants in the collection of anecdotal information are described in the sections below.

SURVEY OF VENDORS DEMOGRAPHICS

The survey of vendors allowed MGT to reach a broader segment of the business population in a more cost-effective and time-efficient manner. **Exhibit 6A** provides the race, ethnicity, and gender of the respondents that participated in the survey.

EXHIBIT 6A
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY OF VENDORS DEMOGRAPHICS

Race/Ethnicity/Gender	Number of Respondents	Percentage of Total
African American	6	1.5%
Alaska Native Corporation	18	4.6%
American Indian/Alaska Native	44	11.2%
Asian Indian/Pacific Islander	7	1.8%
Hispanic American	7	1.8%
Nonminority Female	69	17.6%
Non-M/W/DBE	229	58.3%
Other ¹	13	3.3%

Source: Responses from survey conducted by Oppenheim Research, 2013.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey or chose not to provide their race/ethnicity/gender.

Exhibit 6B shows that, of the firms surveyed, 18.3 percent primarily bid as a prime, 48.6 percent primarily bid as a subcontractor, and 33 percent bid as both a prime and subcontractor. **Exhibit 6C** details the certification types of the survey participants.

EXHIBIT 6B
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY OF VENDORS DEMOGRAPHICS
BIDDER TYPE

Race/Ethnicity/Gender	Bid as a Prime	Bid as a Subcontractor	Bid as Both Prime and Sub
African American	0%	0.8%	0.8%
Alaska Native Corporation	1.5%	1.0%	2.0%
American Indian/Alaska Native	2.3%	4.8%	4.0%
Asian Indian/Pacific Islander	0%	1.0%	0.8%
Hispanic American	0.5%	1.0%	0.3%
Nonminority Female	2.0%	10.2%	5.3%
Non-M/W/DBE	11.5%	28.2%	18.6%
Other ¹	0%	0.5%	0.8%

Source: Responses from survey conducted by Oppenheim Research, 2013.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey or chose not to provide their race/ethnicity/gender.

EXHIBIT 6C
 ALASKA DEPARTMENT OF TRANSPORTATION
 SURVEY OF VENDORS DEMOGRAPHICS
 CERTIFICATION TYPE

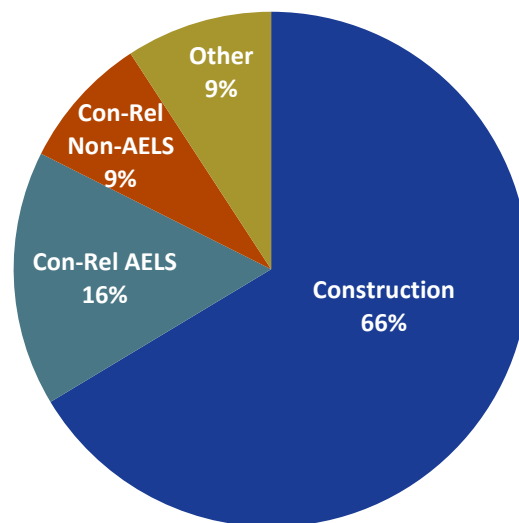
Certification Type	Number of Respondents	Percentage of Total
Minority Business Enterprise (MBE)	37	9.4%
Small Business Enterprise (SBE)	138	35.1%
Woman Business Enterprise (WBE)	32	8.1%
Disadvantaged Business Enterprise (DBE)	68	17.3%
HubZone	52	13.2%
Alaska Native Corporation (ANC)	26	6.6%
8A	28	7.1%
Other ¹	11	2.8%

Source: Responses from survey conducted by Oppenheim Research, 2013.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey or chose not to provide their race/ethnicity/gender.

Exhibit 6D categorizes the distribution of respondents based on their types of services. The business industries for the study were Construction, Construction-Related AELS, and Construction-Related Non-AELS. The “Other” industry category indicates that the primary line of business is not associated with the primary line of business outlined in the survey. Definitions of business industries are discussed in **Chapter III, Market Area and Utilization**.

EXHIBIT 6D
 ALASKA DEPARTMENT OF TRANSPORTATION
 SURVEY OF VENDORS DEMOGRAPHICS
 BUSINESS INDUSTRY



Source: Responses from survey conducted by Oppenheim Research, 2013.

Several survey questions were asked to determine the capacity of the respondents. Exhibits 6E, 6F, and 6G detail the size of the firms by the number of employees, the largest prime contracts, and largest subcontracts awarded during the study period October 1, 2006, through September 30, 2011. Exhibit 6E shows that 50.6 percent of the firms surveyed have 0-10 employees excluding the owner.

EXHIBIT 6E
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY OF VENDORS DEMOGRAPHICS
NUMBER OF EMPLOYEES
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Race/Ethnicity/Gender	0-10 Employees	11-20 Employees	21-30 Employees	31-40 Employees	41+ Employees
African American	1.3%	0.0%	0.0%	0.3%	0.0%
Alaska Native Corporation	1.5%	1.3%	0.5%	0.0%	1.3%
American Indian/Alaska Natives	6.4%	2.3%	1.3%	0.3%	1.0%
Asian Indian/Pacific Islanders	1.0%	0.8%	0.0%	0.0%	0.0%
Hispanic American	0.5%	0.3%	0.5%	0.3%	0.3%
Nonminority Female	11.2%	3.3%	1.5%	0.3%	1.3%
Non-M/W/DBE	28.5%	16.3%	3.6%	1.5%	8.4%
Other ¹	0.3%	1.0%	0.3%	0.3%	1.5%
Total	50.6%	25.2%	7.6%	2.8%	13.7%

Source: Responses from survey conducted by Oppenheim Research, 2013.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey.

Exhibit 6F details the dollar range of the largest contract awarded to respondents during the study period. M/W/DBE (8.2%) and non-M/W/DBE (18.3%) primes are in the \$1 million and greater range.

EXHIBIT 6F
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY OF VENDORS DEMOGRAPHICS
LARGEST CONTRACT AWARDED - PRIME
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Race/Ethnicity/Gender	Up to \$50,000	\$50,001 - \$100,000	\$100,001 - \$200,000	\$200,001 - \$300,000	\$300,001 - \$400,000	\$400,001 - \$500,000	\$500,001 - \$1 million	> \$1 million
African American	0%	0%	0%	0%	0%	0%	0%	0.3%
Alaska Native Corporation	0%	0.3%	0.5%	0%	0.5%	0%	0.3%	1%
American Indian/Alaska Natives	0.8%	0.3%	0.3%	0.5%	0%	0.3%	0.5%	2.0%
Asian Indian/Pacific Islanders	0%	0%	0%	0%	0%	0%	0.3%	0.8%
Hispanic American	0%	0%	0.3%	0.3%	0%	0%	0%	0.8%
Nonminority Female	0%	0.5%	0.8%	0.3%	0.8%	0.3%	1.0%	3.3%
Non-M/W/DBE	0.8%	1.5%	1.5%	2.8%	1.5%	1.3%	2.8%	18.3%
Other ¹	0.3%	0%	0%	0%	0%	0%	0%	1.0%

Source: Responses from survey conducted by Oppenheim Research, 2013.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey.

Exhibit 6G details the dollar ranges of work performed as a subcontractor on the largest contract awarded during the study period. M/W/DBE (7.1%) and non-M/W/DBE (12.7%) subcontractors are in the \$1 million and greater range.

EXHIBIT 6G
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY OF VENDORS DEMOGRAPHICS
LARGEST CONTRACT AWARDED - SUBCONTRACTOR
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Race/Ethnicity/Gender	Up to \$50,000	\$50,001 - \$100,000	\$100,001 - \$200,000	\$200,001 - \$300,000	\$300,001 - \$400,000	\$400,001 - \$500,000	\$500,001 - \$1 million	> \$1 million
African American	0%	0.5%	0.3%	0%	0.3%	0%	0%	0%
Alaska Native Corporation	0.8%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.5%
American Indian/Alaska Natives	0%	0.5%	1.5%	0.5%	0.8%	0.3%	1.5%	2.5%
Asian Indian/Pacific Islanders	0%	0.5%	0%	0%	0%	0%	0.3%	0%
Hispanic American	0%	0.3%	0.3%	0%	0%	0.3%	0%	0.5%
Nonminority Female	1.0%	1.3%	2.3%	1.0%	1.3%	0.8%	1.5%	3.6%
Non-M/W/DBE	3.0%	5.6%	2.5%	4.8%	3.3%	2.3%	6.6%	12.7%
Other/Don't Know ¹	0.5%	0.5%	0.3%	0%	0.3%	0.3%	0.3%	0.8%

Source: Responses from survey conducted by L.S. Gallegos, Inc., 2012.

¹ Participants did not associate their race/ethnicity/gender with the groups selected for the survey.

FOCUS GROUP DEMOGRAPHICS

To solicit a diverse group of participants, Donaldson Enterprises randomly contacted firms from a sample set of ADOT&PF's master vendor database to participate in the focus groups. The efforts of Donaldson Enterprises resulted in nine primes and eight subcontractors that participated in the two focus groups.

- ♦ A total of nine business owners or representatives attended the focus group for prime contractors. The ethnic and gender composition included: one Hispanic American, four Native Americans, three nonminority males, and one firm that would not identify their ethnicity. There were no African American, nonminority women, or Asian American participants in attendance.
- ♦ A total of eight business owners or representatives attended the focus groups for subcontractors. The ethnic and gender composition included: one African American, two Hispanic Americans, three nonminority women, and two nonminority males. There were no Asian American or Native American participants in attendance.

PUBLIC HEARINGS DEMOGRAPHICS

Collective attendance at the public hearings included 20 firms, individuals, or association representatives. Anecdotal testimony was provided by nine firms about their experiences doing business with ADOT&PF and/or primes contracted with ADOT&PF.

PERSONAL INTERVIEW DEMOGRAPHICS

The efforts of Donaldson Enterprises resulted in 34 firms that were interviewed.

- ♦ Of the 12 prime firms that were interviewed, the ethnic and gender composition included three African Americans, three nonminority women, five nonminority males, and one Alaska Native Corporation. There were no Asian American, Hispanic American, or Native American participants interviewed.
- ♦ Of the 22 subcontractors that were interviewed, the ethnic and gender composition included one Hispanic American, two Native Americans, five nonminority women, two Alaska Native Corporations, one Alaska Native, and 11 nonminority males. There were no African American or Asian American participants interviewed.

3. BARRIERS TO DOING BUSINESS WITH ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

In the normal course of business, entrepreneurs may face certain barriers when establishing and operating a business enterprise. Several factors may also prevent a business from being selected for a contract. In this section, MGT documents participant responses from the survey of vendors, interviews, public hearings, and focus groups concerning barriers participants faced in the procurement process and factors that prevented them from winning contracts or purchase orders.

PROCUREMENT PROCESS

Survey of Vendors

Questions for the survey of vendors were designed to gather business owners' perceptions about the procurement process and their experiences when doing business or attempting to do business with ADOT&PF. An analysis of the responses showed that the majority of firms responded to questions about barriers to doing business with ADOT&PF.

Among the 151 M/W/DBEs who responded to survey questions about barriers to doing business, the biggest concern for M/W/DBE primes was competing with large firms (17.2% of M/W/DBE primes). Similarly, the biggest concern for M/W/DBE subcontractors was also competing with large firms (15.2% of M/W/DBE subcontractors). Other key issues for M/W/DBE respondents participating in the survey are noted as follows. Detailed results for all respondents and statistically significant differences in M/W/DBE responses to questions are located in [Appendix G – Survey of Vendors Results](#).

Primes:

- ♦ Unnecessary restrictive contract specifications – 14.0%
- ♦ Contracts too large – 11.3%
- ♦ Limited time given to prepare bid or prequalification package – 11.0%
- ♦ Lack of personnel – 11.0%

Subcontractors:

- ♦ Slow payment or nonpayment from primes – 13.9%
- ♦ Lack of personnel – 11.3%

- ♦ Limited time given to prepare bid or quote – 10.6%
- ♦ Contracts too large – 9.3%

Anecdotal Responses - Primes

The following section provides a summary of anecdotal comments from prime firms provided during the focus groups, personal interviews, or public hearings when asked about barriers they face in doing business or attempting to do business with ADOT&PF.

Obstacles in the Procurement Process are noted as firms' perceptions or experiences of whether there are excessive procedures that create problems in the business owners' attempts to comply with the requirements of the procurement process.

- ♦ Both M/W/DBE and non-M/W/DBE firms stated that the various regions have different guidelines on how projects are bid and managed. They added that ADOT&PF will accept the "lowest bid regardless if the bid is reasonable or responsive." In addition, participants stated that ADOT&PF staff do not understand their own paperwork, and feel that staff "have their favorites" that they like to work with even though other firms are prequalified by ADOT&PF. Participants also stated that the prequalification criterion of having previous experience working with ADOT&PF is a barrier, since firms cannot gain experience if they are never awarded ADOT&PF projects.

Meeting DBE Goal is noted as a barrier when attempting to identify DBE firms.

- ♦ Participant responses to this question were divided. Some participants stated that they meet the DBE goals without any problems although they are very cautious in subcontracting with new DBE firms. To meet the goals, some of the firms host network meetings catered to DBEs as part of their good faith efforts. Some participants commented that many firms listed in the DBE directory do not have the capacity to perform the scope of work they are certified to do. In addition, participants were concerned that trying to find DBE firms in remote areas presents a problem, and that the DBE goals are not appropriately applied to the scope of work, which creates a situation where there are no DBEs to solicit for work. Participants agreed that ADOT&PF should be more transparent in how the goals are set and perform a re-evaluation of what work categories are included in the goal setting process.

Central Region WBE Waiver is noted as the impact the waiver creates for doing business with ADOT&PF.

- ♦ Most of the male-owned business participants were not impacted by the central region waiver. However, nonminority women-owned firms feel that the overutilization of nonminority women identified in the previous disparity study was based on the overutilization of one firm which, in turn, excluded all WBE firms and stated that that decision was unfair to the remaining nonminority women.

Anecdotal Responses - Subcontractors

The following section provides a summary of anecdotal comments from subcontractors provided during the focus groups, personal interviews, or public hearings when asked about barriers they face in doing business or attempting to do business with primes on ADOT&PF projects.

Notification of Contract/Bid Opportunities is noted as the process by which firms are notified of contract/bid opportunities.

- ♦ The participants overwhelmingly agreed that they receive notification of contract or bid opportunities either from primes, trade associations, other subcontractors, or ADOT&PF.

Obstacles in the Bid Process are noted as firms' perceptions or experiences of whether there are excessive or unfair procedures that create problems in the business owners' attempts to comply with bid requirements.

- ♦ Participants stated that the perception that DBEs do not have the capacity or expertise to perform the work is a barrier. The barrier is that primes will either not accept their bid or shop their numbers so they are no longer the lowest bidder.

4. DBE PROGRAM

The following section provides a summary of additional anecdotal comments concerning DBE program requirements.

ANECDOTAL RESPONSES

- ♦ Participants collectively stated that they would like to see more oversight of the DBE program to ensure primes are adhering to program requirements and dealing fairly with DBE subcontractors. In addition, participants stated that ADOT&PF should be more aware of, and closely monitor, nonminority female-owned firms to ensure they are the true owners and operators of their businesses. Other participants stated that they would like to see more consideration for utilizing Native Alaskans on projects in remote areas.

5. PRIME CONTRACTOR PRACTICES

Participants were asked to discuss their experiences working with or observing primes contracted by ADOT&PF or in the private sector marketplace.

ANECDOTAL RESPONSES

- ♦ Subcontractors stated there were many prime practices that have been barriers to their firms' success on ADOT&PF projects. Anecdotal comments from subcontractors included: calling Juneau to find out if the prime was paid because the prime will not tell them; ADOT&PF will not assist subcontractors in getting paid but have input and oversight of what DBEs are approved as a subcontractor; being told by the prime that their firm is the low bidder but the subcontract was awarded to a nonminority male firm; primes receiving payment for change order work but the DBE subcontractor does not get paid for that additional change order work; and primes forcing unrealistic work schedules on subcontractors that ADOT&PF is not putting on the prime.
- ♦ In addition, participants were frustrated that ADOT&PF continued to allow primes with unethical practices against DBEs to continue to win contracts, and that ADOT&PF does not offer mediation between primes and subcontractors for disputes on ADOT&PF projects. Several firms

expressed their frustration of being contacted to “meet the good faith effort” requirements, but not being seriously considered when the prime wins the contract.

6. ACCESS TO CAPITAL

The following sections provide survey results and a summary of anecdotal comments concerning participants’ experiences accessing financial capital during the study period.

SURVEY OF VENDORS RESPONSES

Survey respondents were asked if they applied for a commercial loan during the study period and whether they were approved or denied. If their loan was denied, they were asked what they believed was the basis of their denial. Of the 162 (41.2% of total) respondents that applied for a commercial loan, 36 percent were M/W/DBEs. Less than 11 percent of M/W/DBE applicants (six firms) were denied loans; four of these six firms denied loans were Alaska Natives.

ANECDOTAL RESPONSES

- ♦ Prime participants did not have an overwhelming concern about access to capital. However, subcontractor participants did express concerns with access to capital since they rely on the primes to pay them in a timely fashion. Participants agreed that, if subcontractors do not have a line of credit, it is difficult to keep their company in business.

7. DISCRIMINATION AND DISPARATE TREATMENT

Survey, focus group, interview, and public hearing participants were asked if they experienced discriminatory or disparate behavior by ADOT&PF, its primes, or in the private sector during the study period.

SURVEY OF VENDORS RESPONSES

Exhibit 6H illustrates the percentage of survey respondents who stated that they experienced discriminatory behavior from either ADOT&PF, prime contractors/professional consultants contracted by ADOT&PF, or while conducting business in the private sector marketplace.

EXHIBIT 6H
ALASKA DEPARTMENT OF TRANSPORTATION
SURVEY RESULTS
DISCRIMINATION
BY RACE/ETHNICITY/GENDER CLASSIFICATION

	By ADOT&PF	By Primes	Private Sector
M/W/DBE (Prime)	3.3%		
Non-M/W/DBE (Prime)	0.9%		
M/W/DBE (Subcontractor)		6.6%	
Non-M/W/DBE (Subcontractor)		4.4%	
M/W/DBE Firms			9.3%
Non-M/W/DBE Firms			7.0%

Source: Responses from telephone survey conducted by Oppenheim Research, 2013.

With respect to disparate treatment M/W/DBE respondents reported:

- ♦ An informal network precluded their firms from obtaining work in the private sector - 17.2%.
- ♦ Seldom or never being solicited when there were no DBE goals - 40.4%.
- ♦ Being dropped from a project after being included to satisfy good faith efforts requirements - 9.9%.
- ♦ Experiencing unequal or unfair treatment from primes – 20.5%

ANECDOTAL RESPONSES

- ♦ Anecdotal responses from participants varied on this issue. M/W/DBE firms felt that they experienced disparate treatment from primes, as well as ADOT&PF, based on the treatment of their firm compared to non-M/W/DBEs. Non-M/W/DBE firms stated that the DBE program, in their view, creates a disadvantage for their firms because it takes work away from them.

8. STAKEHOLDER INTERVIEWS

In addition to receiving anecdotal comments from the business owners, MGT conducted interviews with two trade associations to get their perceptions on the impact of the DBE program to its members. During the interview, stakeholders were asked to provide their perceptions on the implementation of the DBE goals, barriers their members faced, and any other comments they felt were relevant to this disparity study. Lastly, the stakeholders were asked to provide their recommendations for program improvement.

While both stakeholder representatives supported the DBE Program, their members have expressed their frustration with various elements of the program like the calculation of the DBE goals. The representatives agreed that the calculation of DBE availability is vitally important to the success of goal setting. In part, they believe that the current goals are established on miscalculated availability of firms truly “qualified” to do work for ADOT&PF. They stated that firms are certified as DBEs in areas they do not have the experience or capacity to work. In some cases, the firms are certified to do work where professional licenses (i.e., engineering) are required and the DBE firm does not hold that license. The

interviewees stated that this inflates the number of DBEs in the directory but is unrealistic when bidders are attempting to identify “qualified” DBEs to meet the goals. Their members find that the establishment of “unachievable” goals is a barrier to meeting the DBE goals.

Stakeholder representatives also agreed that, where feasible, ADOT&PF should directly contract with DBEs when there are sufficient DBEs to bid on the particular scope of work. They also would like to see ADOT&PF verify the qualification and licenses, where applicable, of the work categories DBEs select as part of their certification.

9. SUGGESTED REMEDIES FROM ANECDOTAL PARTICIPANTS

While collecting anecdotal data, participants were asked to provide their suggestions and recommendations for improving the procurement process, increasing M/W/DBE utilization, or improving the DBE program. A few recurring suggestions and/or recommendations provided by participants were:

1. *Maintain transparency when establishing DBE goals.*
2. *Hire local residents in remote areas.*
3. *Offer courses on business growth and doing business with ADOT&PF. Courses would include Davis-Bacon requirements, how to increase bonding capacity, etc.*
4. *Revamp or revise the monitoring or compliance component of DBE program to ensure DBEs are treated fairly.*

10. CONCLUSIONS

Between the focus groups, survey of vendors, public hearing testimonies, and personal interviews, MGT and its subconsultants received anecdotal data from 464 business owners or representatives that have done business with, or attempted to do business with, ADOT&PF. In comparison, the Ninth Circuit Court of Appeals accepted anecdotal information from 57 interviewees in *Coral Construction*.

The state of Alaska has a small community of firms that do business with ADOT&PF. Prime firms generally want to meet DBE goals; however, their concern is the qualification and certification of DBE firms, particularly in engineering trades. There were few minority-owned DBE firms that participated in the anecdotal activities. However, the DBE firms that did participate want to be treated fairly in bidding and working on ADOT&PF projects. Both prime firms and DBEs want to receive more assistance from ADOT&PF in coordination of program requirements, mediation, and assistance with identifying primes to DBEs and DBEs to primes.

**VII FINDINGS AND
RECOMMENDATIONS**

CHAPTER VII: FINDINGS AND RECOMMENDATIONS

CHAPTER SECTIONS

1. Introduction
2. Findings
3. Commendations and Recommendations

I. INTRODUCTION

In July 2012, MGT of America, Inc. (MGT), was retained to conduct a Disadvantaged Business Enterprise (DBE) Availability and Disparity Study for the Alaska Department of Transportation and Public Facilities (ADOT&PF) to provide current data on the ADOT&PF programs. In this chapter, MGT provides findings for the ADOT&PF on minority, women, and disadvantaged business enterprise (M/W/DBE) utilization and

availability.¹ This study consisted of fact-finding to analyze ADOT&PF procurement trends and practices for the study period from October 1, 2006, through September 30, 2011; to evaluate the impact of race- and gender-neutral remedial efforts; and to evaluate various options for future program development.

The results of this study and conclusions drawn are presented in detail in **Chapters III** through **VI** of this report.

2. FINDINGS

FINDING A: HISTORICAL M/W/DBE UTILIZATION AND DISPARITY

The 2008 ADOT&PF disparity study found that from October 1, 2001, through September 30, 2006:

- ◆ For federally funded prime construction contracts, 22 DBEs were awarded contracts totaling \$80.2 million, 4.81 percent of total ADOT&PF spending on federally funded construction contracts.
- ◆ For federally funded prime professional services agreements (PSAs) contracts, 13 DBEs were awarded contracts totaling \$41.0 million, 16.18 percent of total ADOT&PF spending on federally funded professional services contracts.
- ◆ For construction subcontracts on federally funded contracts, 92 DBEs were awarded contracts totaling \$95.3 million, 5.71 percent of construction subcontract dollars on federally funded contracts.
- ◆ For PSA subcontracts on federally funded contracts, 32 DBEs were awarded contracts totaling \$3.4 million, 1.37 percent of construction subcontract dollars on federally funded contracts.

¹ M/W/DBEs includes minority- and women-owned firms that are certified DBEs and that are not certified DBEs.

FINDING B: RECENT DBE POLICY

ADOT&PF eliminated the race-conscious elements of its DBE goals program on January 10, 2006. On April 1, 2011, ADOT&PF returned to race-conscious goals for Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) funded projects. Federal Highway Administration (FHWA) approved a return to race-conscious project goals in June 2011. On April 1, 2011, ADOT&PF began setting goals on FHWA construction projects in the Northern and Southeast Regions. On October 1, 2011, ADOT&PF began setting goals on FHWA construction projects in the Central Region. On April 1, 2012, ADOT&PF began setting goals on PSAs.

FHWA approved a waiver for the Central Region on March 30, 2011, and ADOT&PF implemented the waiver on September 15, 2011. This waiver provided that certified DBEs owned by nonminority women would be omitted from DBE contract goal setting in the Central Region on FHWA projects. The waiver did not apply to PSAs. Under the waiver, using nonminority women was counted as race neutral utilization towards the DBE goal. On December 14, 2012, ADOT&PF asked the FHWA to remove the waiver based on its experience with the Central Region waiver and a survey of prime contractors, subcontractors, and DBEs in the fall of 2011. The FHWA declined to remove the waiver until after the results of this study.

FINDING C: M/W/DBE CONSTRUCTION SUBCONTRACTOR UTILIZATION AND DISPARITY

The dollar value of M/W/DBE subcontractor utilization on ADOT&PF projects over the current study period from October 1, 2006, through September 30, 2011, within the relevant market was as follows:

- ◆ Fifty-four MBEs were awarded contracts totaling \$61.3 million, 16.43 percent of the total construction subcontract dollars; 25 WBEs were awarded \$38.8 million in contracts, 10.40 percent of the total construction subcontract dollars (**Exhibit 7A**). There was disparity for African American construction subcontractors, as well as substantial disparity for Asian Pacific Islander and Alaska Native Corporation construction subcontractors on ADOT&PF FHWA projects.

EXHIBIT 7A
SUMMARY OF CONSTRUCTION SUBCONTRACT UTILIZATION
BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION
ALASKA DOT & PF
OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2011

BUSINESS OWNERSHIP CLASSIFICATION	FAA (\$)	FHWA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$19,041,198	\$37,095,803	\$1,535,190	\$57,672,191
Nonminority Women	\$9,618,374	\$29,203,385	\$19,900	\$38,841,659
Total M/W/DBE Firms	\$28,659,572	\$66,299,188	\$1,555,090	\$96,513,851
	(%)	(%)	(%)	(%)
Minority Business	15.64%	15.38%	22.89%	15.60%
Nonminority Women	7.90%	12.11%	0.30%	10.51%
Total M/W/DBE Firms	23.54%	27.48%	23.19%	26.11%

- ◆ Fifty-five DBE certified construction subcontractors were awarded contracts totaling \$66.9 million, 18.11 percent of the total construction subcontract dollars.

FINDING D: M/W/DBE PROFESSIONAL SERVICE AGREEMENT SUBCONTRACTOR UTILIZATION

- Three MBEs were awarded contracts totaling \$68,712, 7.59 percent of the total awards to PSA subconsultants (**Exhibit 7B**). Five WBEs were awarded contracts totaling \$792,368, 87.56 percent of the total awards to PSA subconsultants. Certified DBE PSA subconsultants won 91.0 percent of the dollars awarded to PSA subconsultants; however, this amount constituted about 1.1 percent of total PSA contract awards. Because of the very small dollar amounts involved, no disparity ratios were calculated for PSA subconsultants.

EXHIBIT 7B
SUMMARY OF PROFESSIONAL SERVICES SUBCONTRACT UTILIZATION
BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION
ALASKA DOT & PF
OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2011

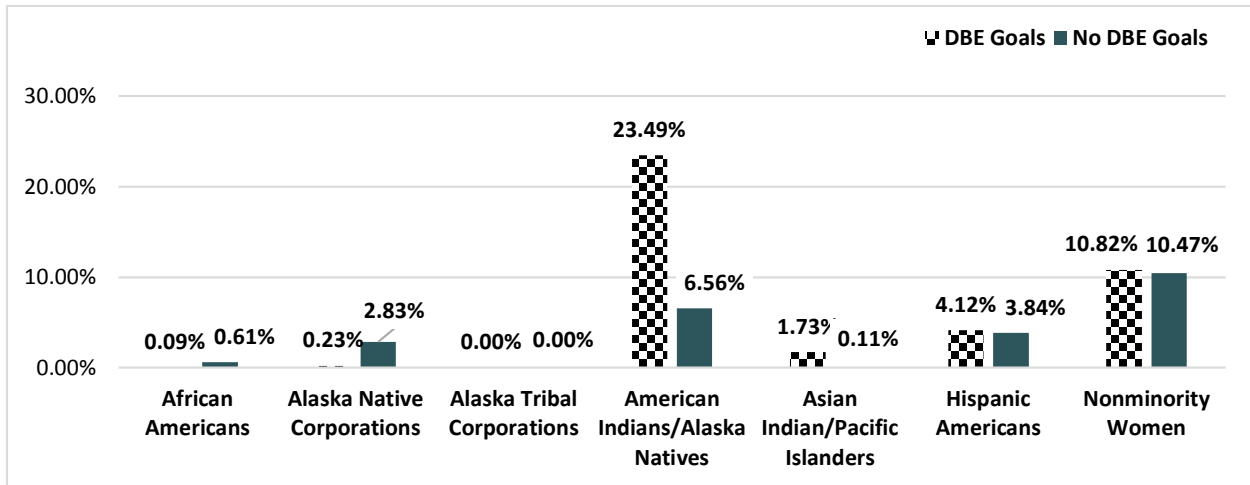
BUSINESS OWNERSHIP CLASSIFICATION	FAA (\$)	FHWA (\$)	FTA (\$)	TOTAL (\$)
Minority Business	\$20,610	\$48,102	\$0	\$68,712
Nonminority Women	\$129,736	\$662,632	\$0	\$792,368
Total M/W/DBE Firms	\$150,346	\$710,734	\$0	\$861,080
	(%)	(%)	(%)	(%)
Minority Business	13.71%	6.77%	0.00%	7.59%
Nonminority Women	86.29%	93.23%	0.00%	87.56%
Total M/W/DBE Firms	100.00%	100.00%	0.00%	95.15%

Of the PSA subcontracts, MBEs were awarded \$68,712 and WBE \$15,450 in Architects, Engineers and Land Surveyors (AELS) subcontracts. WBEs were awarded \$776,918 and MBEs \$0 in non-AELS subcontracts.

FINDING E: NON-GOAL ANALYSIS

During the study period, 89.50 percent of the construction subcontract dollars was awarded to projects without DBE goals. M/W/DBE construction subcontractor utilization was 24.42 percent when no DBE goals were assigned, and 40.50 percent when DBE goals were assigned. However, for most of the M/W/DBE groups, except Alaska Natives, there was not much difference in construction subcontractor utilization between projects with and without DBE goals, as shown by **Exhibit 7C**. Moreover, 83.71 percent of M/W/DBE construction subcontractor utilization over the study period came on projects without DBE goals.

EXHIBIT 7C
 COMPARISON OF CONSTRUCTION SUBCONTRACT UTILIZATION
 WITH DBE GOALS AND WITHOUT DBE GOALS
 BUSINESS OWNERSHIP CLASSIFICATION
 ALASKA DOT & PF
 OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2011



FINDING F: CENTRAL REGION SUBCONTRACTOR UTILIZATION

The findings differed somewhat when the data were examined on a regional basis. In the Central Region in particular, there was no difference in M/W/DBE construction subcontractor utilization between projects with and without DBE goals. For nonminority women construction, subcontractor utilization was actually higher on projects without DBE goals than on projects with DBE goals.

FINDING G: M/W/DBE PRIME CONSTRUCTION UTILIZATION

The dollar value of M/W/DBE prime construction utilization by the ADOT&PF over the current study period from October 1, 2006, through September 30, 2011, within the relevant market was as follows:

- ◆ Sixteen MBEs were awarded \$103.6 million in contracts (5.47% of the total) for prime construction; three WBEs were awarded \$4.9 million in contracts (0.26% of the total) for prime construction ([Exhibit 7D](#)).

EXHIBIT 7D
SUMMARY OF CONSTRUCTION PRIME CONTRACTOR UTILIZATION
BY FUNDING SOURCE
BUSINESS OWNERSHIP CLASSIFICATION
ALASKA DOT & PF
OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2011

BUSINESS OWNERSHIP CLASSIFICATION	FAA	FHWA	FTA	TOTAL
	(\$)	(\$)	(\$)	(\$)
Minority Business	\$49,141,996	\$51,409,591	\$3,127,459	\$103,679,046
Nonminority Women	\$638,700	\$4,316,408	\$0	\$4,955,108
Total M/W/DBE Firms	\$49,780,696	\$55,725,999	\$3,127,459	\$108,634,154
	(%)	(%)	(%)	(%)
Minority Business	6.20%	4.74%	17.61%	5.47%
Nonminority Women	0.08%	0.40%	0.00%	0.26%
Total M/W/DBE Firms	6.28%	5.14%	17.61%	5.73%

- ◆ Four DBEs were awarded \$6.1 million (0.33% of the total) in prime construction contracts.

FINDING H: M/W/DBE PRIME PROFESSIONAL SERVICES AGREEMENT UTILIZATION

The dollar value of M/W/DBE prime PSA utilization by the ADOT&PF over the current study period from October 1, 2006, through September 30, 2011, within the relevant market was as follows:

- ◆ Two MBEs were awarded \$405,910 in contracts (0.89% of the total) to prime AELS consultants. Four WBEs were awarded \$756,338 in contracts (1.66% of the total) for prime AELS consultants.
- ◆ Two WBEs were awarded \$197,060 in contracts (0.65% of the total) to prime non-AELS consultants. No MBEs were awarded to non-AELS consultants.

FINDING I: ANECDOTAL COMMENTS

Among the M/W/DBEs who responded to questions about barriers to doing business, the biggest concern for both prime and subcontractors was competing with large firms (17.2% of M/W/DBE primes, 26 firms; and 15.2% of M/W/DBE subcontractor, 23 firms). Other key issues noted by M/W/DBE respondents included:

Primes:

- ◆ Unnecessary restrictive contract specifications – 14.0 percent.
- ◆ Limited time given to prepare bid or prequalification package – 11.0 percent.
- ◆ Lack of personnel – 10.6 percent.
- ◆ Contracts too large – 9.3 percent.

Subcontractors

- ◆ Slow payment or nonpayment from primes – 13.9 percent.
- ◆ Lack of personnel – 11.3 percent.
- ◆ Limited time given to prepare bid or quote – 10.6 percent.
- ◆ Contracts too large – 9.3 percent.

With respect to disparate treatment M/W/DBE respondents reported:

- ♦ Seldom or never being solicited when there were no DBE goals - 40.4 percent (61 firms).
- ♦ An informal network precluded their firms from obtaining work in the private sector - 17.2 percent (26 firms).
- ♦ Being dropped from a project after being included to satisfy good faith efforts requirements - 9.9 percent (15 firms).
- ♦ Discrimination from ADOT&PF and its prime contractors - 2.6 percent (4 firms).

3. COMMENDATIONS AND RECOMMENDATIONS

Most of the following commendations and recommendations are based on multiple findings and do not necessarily tie to one finding.

RECOMMENDATION A: PROPOSED DBE GOALS

MGT proposes the following annual DBE goals for ADOT&PF by transportation mode for the upcoming period (**Exhibit 7E**):

EXHIBIT 7E
PROPOSED DBE GOALS, PAST DBE AND M/W/DBE OVERALL UTILIZATION, FFY 2012-14 DBE GOALS
FHWA, FAA, FTA

Mode	Proposed DBE Goal	DBE Utilization in Study Period	M/W/DBE Utilization in Study Period	FFY 2012-14 DBE Goal
FHWA	3.60%	4.30%	11.20%	10.82%
FAA	2.80%	3.20%	9.60%	10.50%
FTA	5.00%	14.10%	29.40%	8.81%

The methodology for calculating these proposed goals is contained in **Appendix M**. The percentage of DBE and M/W/DBE utilization is calculated by dividing total spending with DBEs (construction and PSAs, prime contracting and subcontracting) over total spending by each mode for the study period.

Two observations should be made about these proposed DBE goals. First, the proposed DBE goals are closer to ADOT&PF DBE goals in the FFY 2007-08 period (shown in **Exhibit 3B** in **Chapter III**). Second, **Exhibit 7E** shows that actual M/W/DBE utilization during the study period was similar to or above DBE goals for each mode for FFY 2012-14. This result is due, in part, to the utilization of minority- and women-owned firms that graduated from the DBE program. Thus, minority- and women-owned firms are being utilized near or above ADOT&PF DBE goals, but the utilization of certified DBEs is below current ADOT&PF DBE goals.

COMMENDATION AND RECOMMENDATION B: ASPIRATIONAL SUBCONTRACTOR PROJECT GOALS

ADOT&PF should be commended for maintaining fairly strong M/W/DBE subcontractor utilization in the absence of DBE goals. Based on this level of non-goal M/W/DBE subcontractor participation, there is not a strong factual predicate for across-the-board race- and gender-conscious DBE subcontractor goals, or setting a race-conscious component of the annual DBE goal. While a large percentage of M/W/DBE

survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data indicated that there generally was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals. From the non-goal analysis, the strongest case for continued use of occasional race-conscious project goals in regions with existing disparities is with American Indian/Alaska Native business enterprises in construction subcontracting.

The regional and non-goal analysis discussed above and in more detail in **Chapter IV** suggest that there is not sufficient evidence to treat nonminority women differently in the ADOT&PF Central Region. Nonminority women were over-utilized in all ADOT&PF regions. Moreover, given the recommendation of limited to no race-conscious DBE goals, the issue of the Central Region waiver is no longer relevant.

ADOT&PF should consider the occasional use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. These project goals are called aspirational because ADOT&PF would set the aspirational DBE project goals on projects in a similar fashion as current DBE goals, with one difference: bids are not rejected for failure to meet the DBE project goal, or for failure to submit good faith efforts documentation.

COMMENDATION AND RECOMMENDATION C: DBE POLICY

ADOT&PF should be commended for its DBE outreach efforts, in particular, the annual statewide DBE conferences and collaboration with local business development organizations.

ADOT&PF should also be commended for its rules promoting the solicitation of certified DBEs for small PSAs with FHWA or FAA funding. As noted in **Finding D** above, DBEs won nearly all the PSA subcontracts during the study period, although the amounts were small. ADOT&PF can also employ aspirational DBE project goals for PSAs to encourage more subcontracting on PSA contracts.

COMMENDATION AND RECOMMENDATION D: DATA MANAGEMENT

ADOT&PF should be commended for using the BizTrak system to maintain data on contracting and PSAs at the prime contractor/consultant and subcontractor/subconsultant levels by race, ethnicity, and gender classification. However, ADOT&PF should improve the collection and reporting of the data. First, ADOT&PF should update and implement strategies to improve its collection and management of contracting and PSA data. A centralized data collection strategy would help with the standardization of the data and ensure that that uniform data classifications are used. Next, it is imperative that a mechanism is developed so that all data (including data maintained by the regional offices) are tracked and maintained in this centralized system. This centralized system could have several modules, such as contract management, certification management, and vendor management. The contract management module would track all contracting and PSA data including awards and payments made to prime contractors/consultants and subcontractor/subconsultants. The vendor management module would not be limited to only firms that do business with ADOT&PF, but also firms that submit bids and/or RFPs to do business with ADOT&PF, as well as subcontractors/subconsultants.

The certification management module could provide assistance in tracking DBE certification. This system would assist ADOT&PF to track and maintain more comprehensive and consistent data.