

GEORGIA DOT RESEARCH PROJECT 13-29

FINAL REPORT

**TASK B: EVALUATION OF GDOT'S OVERCONCENTRATION IN
CERTAIN PROCUREMENT CATEGORIES**



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16. Abstract:

The Georgia Department of Transportation (GDOT) is a recipient of federal funds from the U.S. Department of Transportation (U.S. DOT). Therefore, it must implement a Disadvantaged Business Enterprise (DBE) Program in compliance with Federal Regulation 49 C.F.R. Part 26. To meet the legal and regulatory requirements for operating a Disadvantage Business Enterprise (DBE) Program, GDOT commissioned a Disparity Study in 2012. The study found statistical and anecdotal evidence suggesting that DBEs encountered discrimination when pursuing GDOT contracts. However, in one industry (trucking and hauling), the Disparity Study determined that 72% of the contract work went to DBEs. One implication of the finding is that the DBE Program, which was designed to remedy the effects of discrimination, may have caused an undue concentration of DBE subcontractors in the trucking industry. If true, such overconcentration could adversely affect the ability of non-DBEs to bid successfully in the industry. The Federal Regulation and legal decisions require State Departments of Transportation (State DOTs) to assess situations where overconcentration may exist and make appropriate adjustments.

This report examined GDOT’s contracting activity in the trucking and hauling industry exclusively. The study found that non-DBEs comprised 82.6% of all available contractors to GDOT. They accounted for 91.2% of all prequalified prime contractors, 62.8% of all registered subcontractors and 87.9% of prequalified consultants. In comparison, DBEs comprised 8.8% of prime contractors, 37.2% of subcontractors and 12.1% of consultants. However, the distribution is quite different when one focuses only on the trucking and hauling industry. That is, non-DBEs comprised 28.6% of prime contractors and 6.7% of subcontractors in the trucking industry. In contrast, DBEs in the industry made up 71.4% of prime contractors and 93.3% of subcontractors. In all other industries except trucking and hauling, DBEs made up 7.7% of prime contractors and 26.7% of subcontractors.

These results suggest that over-concentration may have occurred in trucking and hauling. Unfortunately, the issue could not be investigated in detail with the data available at GDOT. That is, GDOT’s data contain no information on non-DBEs that perform “off project” trucking work. In fact, most State DOTs have not collected data to execute analyses of overconcentration. The U.S. DOT recognized this gap in data in a recent national assessment. It concluded that data on overconcentration are insufficient and inconclusive, and, therefore, definitive conclusions about the issue cannot be made. This research examined nine State DOTs and found that only one had taken steps to address overconcentration and that its action created adverse impacts. The study also examined secondary industries in which DBE truckers at GDOT operated. It found that the secondary industries were so closely related to the trucking industry that DBE subcontractors would find it difficult to diversify away from trucking. The study makes numerous recommendations. The most important is that GDOT should implement a procedure to collect “off project” trucking activity data. It should also monitor and evaluate annually all trucking and hauling contracting.

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GDOT Research Project No. 13-29

Final Report

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Contract with
Georgia Department of Transportation

In cooperation with
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The contents of this report reflect the views of the author who is responsible for the factual accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Georgia Department of Transportation or the Federal Highway Administration. This report does not constitute a standard, specification, or regulation.

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EXECUTIVE SUMMARY

Purpose and Objectives

The Georgia Department of Transportation (GDOT) is a recipient of federal funds from the U.S. Department of Transportation (U.S. DOT). Because of this, it must comply with Federal Regulation 49 C.F.R. Part 26 regarding the implementation of the Federal Disadvantaged Business Enterprise (DBE) Program.

In compliance with the federal regulation, GDOT commissioned a Disparity Study to examine contracting outcomes of DBEs. The Disparity Study was completed in 2012. It found statistical and anecdotal evidence that DBEs have encountered discrimination when pursuing contracts at GDOT. However, in one industry (trucking and hauling), the Disparity Study found that 72% of contract work was awarded to DBEs. One implication of this finding is the DBE program, which was designed to remedy the effects of discrimination, may have caused an overconcentration of DBE subcontractors in the trucking and hauling industry. This situation has the potential to affect adversely the ability of non-DBE subcontractors to bid successfully in that industry.

The federal regulation and judicial decisions require state DOTs to assess situations where overconcentration may exist and make appropriate adjustments. This study sought to determine whether or not overconcentration has occurred in the trucking and hauling industry at GDOT as a result of the DBE program.

Unfortunately, data available to measure overconcentration are insufficient. The U.S. Department of Transportation (DOT) recognized this gap in data and analysis of

overconcentration in a recent national assessment. It concluded that data on overconcentration are so insufficient and inconclusive that definitive conclusions cannot be made about the issue. This situation is true for GDOT. Specifically, the agency does not capture information on trucking activity that occurs on “off project” work.

Since overconcentration could not be measured, the research focused on the following outcomes: Examining the evidence of overconcentration nationally; measuring the percent of DBEs in the trucking and hauling industry at GDOT; measuring the secondary (i.e. non-trucking) industries within which DBE truckers operate; and making recommendations to understand better the overconcentration of DBEs in trucking and hauling.

Background

The U.S. Supreme Court decision in the case of City of Richmond vs. J. A. Croson Co. and the Croson progeny, as well as the federal regulation, established the legal guidelines within which DBE type programs must operate. The case law and federal regulation require agencies to narrowly tailor all policies that use race or gender preferences to remedy the effects of discrimination. One attribute that is relevant for this analysis is a requirement that agencies limit the adverse impacts of such policies on innocent third parties. Overconcentration of DBEs in a particular industry has the potential to affect adversely non-DBEs in the industry. The GDOT Disparity Study finding that 72% of contract work in trucking and hauling was awarded to DBEs suggests the potential of overconcentration.

The U.S. Department of Transportation (U.S. DOT) has expressed concern that DBE overconcentration might occur in work areas such as guardrail installation, fencing,

landscaping, traffic control, and striping. In 2013, it solicited comments nationally regarding the overconcentration issue. In the end, it concluded that the data from commenters or other sources were insufficient to support a finding that overconcentration is a serious, nationwide problem.

To conduct the research, the study team collected prime contracting and subcontracting data that covered GDOT project activity between January 2009 and May 2014. It also collected information of all contractors that are prequalified prime contractors, registered subcontractors, prequalified professional consultants and certified Disadvantaged Business Enterprises (DBEs).

Unfortunately, GDOT's data limitations made it impossible to measure the overconcentration of DBEs in trucking. That is because the number of DBEs, who operate in the industry must be compared to the number of non-DBEs in the industry. However, GDOT does not collect data on Non-DBEs that engage in "off project" trucking and hauling work. For example, suppose the agency has commissioned a highway project that is partly subsidized by federal funds. The amount of trucking and hauling work that is conducted by DBEs and Non-DBEs would be recorded. However, if simultaneously, those same firms provide trucking work outside the project limits, that information is not recorded. Since non-DBEs are most likely to perform work outside of project limits, data on their trucking activity will be missing. This means that the number of Non-DBE firms performing trucking work and the value of that work are under-recorded.

Findings

- Data limitations make it impossible to draw conclusions about the extent of overconcentration at GDOT.
- A national review of State DOTs determined that there is hardly any definitive research on the issue of overconcentration.
- A review of nine state DOTs found that six of the nine expressed varying degrees of concern about overconcentration. Of these six states, only one (Alaska) took action to correct over-concentration of DBEs. Afterwards, Alaska DOT indicated that the actions it took ultimately caused an adverse impact on DBEs.
- This report examined GDOT's contracting activity in the trucking and hauling industry exclusively. In 2014, GDOT had 2365 available firms: DBEs comprised 17.4% and non-DBEs made up 82.6%. The 17.4% of GDOT's DBEs can be broken down as follows: 11.1% were Minority Business Enterprises (MBEs) and 6.3% Women Business Enterprises (WBEs). The study found that non-DBEs comprised 91.2% of all prequalified prime contractors, 62.8% of all registered subcontractors and 87.9% of prequalified consultants. In comparison, DBEs were of 8.8% of prime contractors, 37.2% of subcontractors and 12.1% of consultants. The distribution of DBEs is quite different when the study focused on the trucking and hauling industry exclusively. Specifically, in trucking and hauling, non-DBEs comprised 28.6% of prime contractors and 6.7% of subcontractors. In contrast, DBEs accounted for 71.4% of prime contractors and 93.3% of subcontractors. In all other industries except trucking and hauling, DBEs made up 7.7% of prime contractors and 26.7% of subcontractors.
- The preliminary result suggests that DBEs are concentrated in trucking. While this represents the most accurate approximation available, it does not include many non-DBEs that perform "off project" work in the trucking industry. As an upshot, it is impossible to determine how biased the data are.

- The research identified other industries in which DBE truckers operated. The purpose was to inform GDOT of how best to assist MBE truckers in diversifying to other areas of work. The results found that 35.1% of MBE subcontractors did not record a secondary industry in which they operated; 28.0% indicated that they also worked in the highway, street and bridge construction industry; 14.0% worked in local general freight trucking as a secondary industry; and 10.5% indicated that they operated in site preparation.
- The secondary industries in which MBEs operated were closely related to the trucking industry. Therefore, it may be difficult to diversify MBE subcontractors away from the trucking. However, this finding needs to be investigated further through personal interviews.
- Regarding WBEs, the results found that 14.8% did not list a secondary industry in which they operated: 29.6% indicated that they also operated in the highway, street and bridge construction; 22.2% recorded local general freight trucking as a secondary industry and 18.5% indicated that they worked in site preparation.
- The secondary industries in which WBEs operated were also closely related to trucking. Therefore, it may also be difficult to diversify WBE subcontractors away from the trucking. Again, this issue needs to be investigated further.

Recommendations

The research recommended that GDOT conduct a follow-up study of DBE overconcentration in trucking and hauling that would achieve the following objectives:

- Identify ways of collecting and monitoring data on all trucking and hauling contracting that occurs “off project”.
- Ensure that methods of capturing off project trucking data do not create a paperwork burden on prime contractors and subcontractors.

- Conduct anecdotal interviews with non-DBE subcontractors in the trucking and hauling industry to document the extent to which they perform off project work.
- Collect any anecdotal or numerical information/data which indicate that DBE goals in trucking have unduly burdened non-DBE contractors.
- Conduct anecdotal interviews with DBEs to identify the extent to which they engage in off project trucking and hauling and are available to work in other industries.
- Validate the secondary industries in which DBEs operate, especially industries that are unrelated to trucking and hauling.
- Determine the likelihood that DBEs can be successful in non-trucking and hauling work codes.
- Identify the kinds of support that would be required to create greater diversification among DBE truckers, assuming that trucking and hauling overconcentration is an issue.
- Examine all trucking and hauling contracts (including off project awards) to determine if goals can be achieved in other areas within which DBEs are qualified, willing and able to perform work.
- Monitor data on trucking and hauling on an annual basis.
- Make annual reports to FHWA on GDOT's efforts to evaluate overconcentration.

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INTRODUCTION

The Georgia Department of Transportation (GDOT) is a recipient of federal funds from the U.S. Department of Transportation (U.S. DOT). Because of this, GDOT must comply with Federal Regulation 49 C.F.R. Part 26. The regulation outlines the responsibilities and duties of recipients in implementing the Federal Disadvantaged Business Enterprise (DBE) Program. Pursuant to the regulation, GDOT must develop and submit its DBE program for approval to the Federal Highway Administration (FHWA). The submittal must include the overall goal for DBE participation on federally funded contracts. The goal should be developed by the evidence of discrimination and the availability and capacity of DBEs, as suggested by the federal regulation. Depending upon the evidence, DBE goals may be achieved through a combination of race-conscious and race-and gender-neutral policies. However, recipients are encouraged to use race-and gender-neutral policies to the maximum extent possible.

Federal courts have ruled that recipients, like the GDOT, are expected to make serious attempts to implement workable race- and gender-neutral policies. Guidelines for such policies are identified in 49 C.F.R. § 26.51(b). Recipients must indicate the percentage of their overall goal that is expected to be attained through such policies.

Numerous legal proceedings (beginning with the U.S. Supreme Court decision in the case of *City of Richmond v. J. A. Croson Co.*) have established that government programs that have race-conscious provisions will be subject to the "strict scrutiny" standard of analysis. The methodology pertaining to the "strict scrutiny standard" was laid out in the landmark U.S. Supreme Court case involving the *City of Richmond v. J.A. Croson*, 488 U.S. 469, 493 (1989), and

the Supreme Court decision involving *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). To meet the standard, an agency must demonstrate that it has a “compelling governmental interest”. This means that there must be strong evidence of discrimination against minorities. Additionally, the strict scrutiny standard requires programs to be narrowly tailored, whenever they use race or gender preferences to eradicate the identified discrimination.

The strict scrutiny standard has two prongs. The first prong requires agencies to have a “compelling governmental interest” in remedying identified past discrimination. This means that there must be evidence that the agency has been an active or passive contributor to discriminatory barriers within its market place.

Some federal courts have ruled that federally mandated DBE programs do not need to satisfy the first prong independently. This is because Congress has already satisfied the compelling interest test and Congress mandates states to implement DBE programs -- as a condition for receiving federal highway funds.

The second prong of the strict scrutiny standard requires DBE programs to be “narrowly tailored”. To satisfy the narrowly tailored prong, federal courts have indicated that DBE programs must meet the following conditions: (1) Show evidence of specific, identified discrimination in the transportation contracting industry; (2) Use race conscious remedies that are flexible and limited in duration; (3) Establish numerical goals for DBEs that are related to the relevant market; (4) Assess the potential of race- and gender-neutral remedies to achieve a portion of the goal; (5) Make the program’s remedy available only to those minority groups

who have suffered discrimination; and (6) Limit the impact of race-conscious remedies on third parties.

Examples of race- and gender-neutral efforts referenced by the courts include the following: training and financial assistance; non-discrimination provisions in contracts; mentoring programs; efforts to make prompt payments to smaller businesses; unbundling large contract solicitations to make them more accessible to smaller businesses; advertising business opportunities; using technical assistance, outreach efforts and "how to do" business seminars; encouraging majority contractors to voluntarily include DBE on projects; creating minority and women business directories; and streamlining the bid solicitation process to improve the accessibility of contracts.¹

A very central aspect of the narrow tailoring provision is to limit the impact of the DBE program on innocent third parties. In this regard, one issue the FHWA requires State DOTs to consider is whether their remedial efforts have led to an over concentration of DBEs in specific industries; thereby causing an undue burden on non-DBEs.

This is the fundamental focus of the current research. Specifically, it seeks to determine whether or not an overconcentration of DBEs exists at GDOT for contractual awards in the trucking and hauling industry. If it does exist, it is important to know whether it has unduly burdened non-DBEs in the industry.

¹ Croson., 488 U.S. 469, 509-10 (1989); Northern Contracting, 473 F.3d at 724; Dade County, 122 F.3d 859, 928; Hershell Gill Consulting, 335 F. Supp. 2d 1305; Builders Ass'n. of Greater Chicago, 298 F.Supp.2d 725 (N.D. Ill. 2003)

DATA LIMITATIONS BY FHWA AND GDOT

FHWA Data Limitations

The U.S. Department of Transportation (DOT) has expressed concern that DBE overconcentration might occur in work areas such as guardrail installation, fencing, landscaping, traffic control, and striping. Unfortunately, no persuasive studies have been conducted at the national or local levels to allow FHWA to draw definitive conclusions about the issue.

In 2013, U.S.DOT solicited comments nationally regarding the overconcentration issue. Most comments indicated that the allegations of overconcentration were untrue. Additionally, prime contractors expressed concern that limiting their ability to use DBEs in certain industries might make it more difficult for them to meet DBE subcontracting goals. Similarly, DBEs were concerned that policies designed to address overconcentration might penalize them for being successful. Below, we quote the published finding of U.S. DOT concerning the comments received.

Updated: Tuesday, June 25, 2013

U.S. Department of Transportation

Section 26.33 What Steps Must a Recipient Take to Address Overconcentration of DBEs in Certain Types of Work?²

“For some time, the Department has heard allegations that DBEs are overconcentrated in certain fields of highway construction work (e.g., guardrail, fencing, landscaping, traffic control, striping). The concern expressed is that there are so many DBEs in these areas that non-DBEs are

² <http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/final-rule-section-26-33> accessed September 4, 2015, 12:40 PM.

frozen out of the opportunity to work. In an attempt to respond to these concerns, the SNPRM [Supplemental Notice of Proposed Rulemaking] asked for comment on a series of options for "diversification" mechanisms, various incentives and disincentives designed to shift DBE participation to other types of work.

The Department received a great deal of comment on these proposals, almost all of it negative. There were few comments suggesting that overconcentration was a serious problem, and many comments said that the alleged problem was not real. Some FTA and FAA [Federal Transit Administration and Federal Aviation Administration] recipients said that if there was a problem with overconcentration, it was limited to the highway construction program. As a general matter, recipients said that the proposed mechanisms were costly, cumbersome, and too prescriptive.

Prime contractors opposed the provisions because they [said it] would make it more difficult for them to find DBEs with which to meet their goals, while DBEs opposed them because they felt the provisions would penalize success and force them out of areas of business in which they were experienced. Many commenters suggested using outreach or business development plans as ways of assisting DBEs to move into additional areas of work.

The Department does not have data from commenters or other sources to support a finding that "overconcentration" is a serious, nationwide problem. However, as part of the narrow tailoring of the DBE program, we believe it would be useful to give recipients the authority to address overconcentration problems where they may occur. In keeping with the increased flexibility that this rule provides recipients, we give recipients discretion to identify situations where overconcentration is unduly burdening non-DBE firms. If a recipient finds an area of overconcentration, it would have to devise means of addressing the problem that work in their local situations. Possible means of dealing with the problem could include assisting prime contractors to find DBEs in non-traditional fields or varying the use of contract goals to lessen any burden on particular types of non-DBE specialty contractors. While recipients would have to obtain DOT approval of determinations of overconcentration and measures for dealing with them, the Department is not prescribing any specific mechanisms for doing so."

This indicates that the U.S. DOT does not have sufficient data to draw nationwide conclusions. Instead, it has requested that State DOTs investigate the problems independently and provide

information as it is uncovered. Although sufficient data are not available to make a general conclusion regarding the issue of overconcentration, Federal Regulation 49 CFR 26.33 requires state transportation agencies to conduct an assessment and address over-concentration wherever it is suspected to be a problem.

GDOT Data Limitations

GDOT is similar to other State DOTs. They have data gaps in measuring overconcentration. While the overconcentration issue primarily concerns DBE subcontractors, to measure the extent of it, we must know the number of DBEs working in the industry. That must be compared to the number of non-DBEs in the industry. This means that data must be available on DBE and non-DBE availability and utilization in the industry.

Presently, GDOT does not require trucking and hauling subcontracting work to be reported if it is accomplished by contractors working “outside” of projects limits. This means that the subcontracting utilization data on GDOT trucking and hauling industry is not all-inclusive. The data especially do not include subcontracts awarded to non-DBE trucking firms that perform off project jobs.

GDOT’s construction manual specifies the following:

“Hauling materials to the Project does not normally require a Subcontract or submitting a copy of the Subcontract Agreement, unless:

- a. The Subcontractor is hauling material on the Project, i.e., excavated material, borrow, etc.

- b. The Subcontractor is performing other Work on the Project in conjunction with the hauling, such as spreading GAB [Graded Aggregate Base] or excavating borrow material.

Contracts between the Department and counties, municipalities, or other State Agencies do not require submitting of any Subcontract Agreements.

Each Subcontractor shall be pre-qualified or registered with the Department as a Subcontractor except for certain Items exempted by the State Transportation Board or Subcontracts totaling \$500,000 or less.”³

The extent to which GDOT regulations cause an undercount of subcontractor utilization cannot be determined with data that are currently available.

This means that the study could not draw conclusions about the extent of overconcentration at GDOT. Therefore, this research primarily investigated the availability of firms in the trucking and hauling industry and made recommendations accordingly.

³ GDOT Construction Manual <http://www.dot.ga.gov/PS/Business/Source/ConstructionSpecs>

RESEARCH METHOD

GDOT commissioned a Disparity Study to examine contracting opportunities of Disadvantaged Business Enterprises (DBEs). The study, which was completed in 2012, concluded that an overconcentration of awards to DBEs may exist in the trucking and hauling industry. The Disparity Study found, “About 72% of the trucking work identified in GDOT and local agency contract data went to DBEs (about one-half to white women-owned DBEs and one-half to minority-owned DBEs)”.⁴

A high percentage of DBEs in trucking and hauling has been identified at other state DOTs. For example, the author of this report conducted a Disparity Study for the North Carolina Department of Transportation (2009). The research found that there were 180 prequalified DBE subcontractors in the trucking and hauling work code; they comprised 36.7% of all available firms in the industry. However, they received 75.3% of trucking and hauling subcontracting dollars.

To conduct the research, the study team collected prime contracting and subcontracting data that covered GDOT project activity between January 2009 and May 2014. As noted in the data limitations section above, information on “off project” trucking and hauling is not measured by GDOT and, therefore, was not included in the data provided to the research team.

Prior to determining that gaps exist in the data, the research team intended to do the following:

1. Examine overconcentration among state DOTs nationally and identify the policies that have been implemented to address it.

⁴ BBC Research & Consulting (2012) *2012 Georgia Department of Transportation Disparity Study*. P8.

2. Measure overconcentration in GDOT trucking and hauling subcontracting work code.
3. Determine whether overconcentration imposed an undue burden on non-DBEs.
4. Determine which groups, minority business enterprises or women business enterprises, are more likely to be represented among the over concentrated firms.
5. Make appropriate recommendations to address overconcentration, if it exists.

The data limitations forced the research team to alter the planned approach and focus on the following outcomes: determine the extent to which overconcentration has occurred nationally at state DOTs and the policies that have been designed to address it; measure the percent of GDOT DBEs in the trucking and hauling industry; measure the secondary (non-trucking) industries within which DBE truckers operate; and make recommendations to better understand the extent of overconcentration among GDOT DBEs.

LITERATURE REVIEW ON OVER-CONCENTRATION

A review of literature confirmed the findings of FHWA. That is, there is hardly any definitive research on the issue of overconcentration. This finding was reaffirmed in a recent research paper presented at the 2014 Annual Meeting of Transportation Research Board (Myers, Kalar and Davila, 2013)⁵. That research conducted an extensive review of literature and found one state DOT (Rhode Island) that identified overconcentration as a burden on non-DBEs. That determination was made in FY 2005.

Our review of nine state DOTs found that six of the nine expressed varying degrees of concern about overconcentration (see Figure 1, which summarizes the research team's national review of overconcentration at state DOTs). Potentially over-concentrated areas included guardrail, traffic maintenance, signage, trucking and hauling, traffic control, geotechnical specialties, and flagging. Of these six states, only one (Alaska) took action to correct over-concentration of DBEs and its actions are worth mentioning in more detail.

The Alaska Department of Transportation found that DBEs were over-utilized in the Central Region of the State on highway construction contracts. The Department requested permission from FHWA to exclude WBE attainment from counting towards DBE goals. Permission was granted in March 2011 for FY 2011-2013. Subsequently, Alaska determined that the suspension adversely affected WBEs and requested permission to rescind the actions in December 2012. The request was denied by FHWA in May 2013. It concluded that insufficient evidence was presented to document the adverse impacts.

⁵ Samuel Myers, T. Kalar and R. Daviola 2013. Anticipating our Future: Overconcentration in DBE Compliance, Paper presented at the 93rd Annual Meeting of the Transportation Research Board, January 2014, Washington D.C.

FIGURE 1. NATIONAL REVIEW OF OVERCONCENTRATION AT STATE DOTs

STATE	EVIDENCE OF DBE OVER-CONCENTRATION	INDUSTRY/WORK CODE OF OVER-CONCENTRATION	PROPOSED SOLUTION TO OVER-CONCENTRATION	OVER-CONCENTRATED GROUP	ASSESSMENT OF POLICY EFFECTIVENESS
ALASKA	YES	GUARDRAIL, TRAFFIC MAINTENANCE, AND STANDARD SIGNS	WAIVER TO EXCLUDE GROUP FROM DBE UTILIZATION GOAL	NON-MINORITY WOMEN	ATTEMPT TO REPEAL WAIVER DENIED
CALIFORNIA	YES	TESTING AND TRUCKING	CONTINUE TO MONITOR	MBE/WBE	NA
COLORADO	YES	GEOTECHNICAL SPECIALTIES, TRAFFIC CONTROL, TRUCKING	NONE SUGGESTED BY DISPARITY STUDY	MBE/WBE	NA
FLORIDA	NO	-	-	-	-
ILLINOIS	NO	-	MONITOR	-	-
IOWA	NO	-	-	-	-
NEW MEXICO	YES	TRUCKING	ALLOW OVER-CONCENTRATION IN TRUCKING INDUSTRY UP TO 80%	MBE/WBE	NA
NORTH CAROLINA	YES	TRUCKING AND HAULING	PERFORM A SEPARATE STUDY; FIND SOLUTION THAT DOES NOT ADVERSELY AFFECT DBES (E.G. HELP THOSE FIRMS DIVERSIFY INTO OTHER SUB-INDUSTRIES)	BLACK FIRMS, OTHER DBES	NA
OREGON	YES	TRUCKING AND FLAGGING, TRADE SERVICES	NONE	BLACK FIRMS, NATIVE AMERICAN FIRMS	NA

FINDINGS

In 2014, GDOT had 2365 firms that were prequalified contractors; prequalified consultants or registered subcontractors (see Figure 2). Broken down by certification status, 17.4% were DBEs (11.1% were MBEs and 6.3% were WBEs) while 82.6% were non-DBEs (Figure 2).

FIGURE 2. CURRENT DISTRIBUTION OF GDOT PREQUALIFIED FIRMS BY MBE AND WBE STATUS

DISTRIBUTION OF ALL GDOT FIRMS BY DBE STATUS			
		NUMBER	% OF TOTAL
	NON-DBE	1954	82.6%
	MBE (DBE)	263	11.1%
	WBE (DBE)	148	6.3%
	Total	2365	100.0%

Figure 3 breaks down firms available to GDOT by prime contracting status, subcontracting status, consulting status and small business status. The results for subcontracting indicate that non-DBEs comprise 62.8%, MBEs comprised 23.9% and WBEs comprised 13.3% (Figure 3).

FIGURE 3. FIRMS AVAILABLE TO GDOT BY PREQUALIFICATION AND DBE STATUS

GDOT PREQUALIFIED FIRMS BY PREQUALIFICATION STATUS AND DBE STATUS								
	DBE.WBE STATUS							
	NON-DBE		MBE		WBE		Total	
	Number	Row %	Number	Row %	Number	Row %	Number	Row %
PRIME CONTRACTOR	384	91.2%	20	4.8%	17	4.0%	421	100.0%
SUBCONTRACTOR	358	62.8%	136	23.9%	76	13.3%	570	100.0%
CONSULTANT	1177	87.9%	107	8.0%	55	4.1%	1339	100.0%
SMALL CERTIFIED NON-DBE BUSINESS	35	100.0%	0	0.0%	0	0.0%	35	100.0%
Total	1954	82.6%	263	11.1%	148	6.3%	2365	100.0%

The research team classified each contractor to GDOT by its primary and secondary North American Industry Classification System (NAICS) code and GDOT work code designation. The primary work code designation was taken from the firm’s subcontracting registration record. Within the trucking and hauling work code and NAICS designation, non-DBEs comprised 6.7% of subcontractors, MBEs comprised 63.3%, and WBEs comprised 30.0% of subcontractors. While this represented the most accurate approximation available, it did not include many non-DBEs that performed work in the trucking industry; especially, if they provided off project trucking services. It is impossible to determine the extent to which the data gap biases the information in Figure 4.

FIGURE 4. FIRMS AVAILABLE TO GDOT IN TRUCKING AND OTHER INDUSTRIES

GDOT PREQUALIFIED FIRMS BY PREQUALIFICATION STATUS, DBE STATUS, TRUCKING STATUS AND THE PREQUALIFICATION STATUS									
	TRUCKING AND HAULING				ALL OTHER SUB WORKCODES				
	PRIME CONTRACTOR		SUBCONTRACTOR		PRIME CONTRACTOR		SUBCONTRACTOR		
	Number	Column %	Number	Column %	Number	Column %	Number	Column %	Number
NON-DBE	2	28.6%	6	6.7%	382	92.3%	352	73.3%	
MBE	3	42.8%	57	63.3%	17	4.1%	79	16.5%	
WBE	2	28.6%	27	30.0%	15	3.6%	49	10.2%	
Total	7	100.0%	90	100.0%	414	100.0%	480	100.0%	

The research team also examined the number of prequalified prime contractors and subcontractors among GDOT available firms. The results indicated that there is a small number of prime contractors in the trucking industry (seven in total). Non-DBEs owned two of those firms; MBEs owned three and two were owned by WBEs (Figure 5).

FIGURE 5. GDOT PRIME CONTRACTORS AND SUBCONTRACTORS IN TRUCKING BY DBE STATUS

GDOT PREQUALIFIED FIRMS BY PREQUALIFICATION STATUS, DBE STATUS, TRUCKING STATUS AND THE PREQUALIFICATION STATUS									
	TRUCKING AND HAULING				ALL OTHER SUB WORKCODES				
	PRIME CONTRACTOR		SUBCONTRACTOR		PRIME CONTRACTOR		SUBCONTRACTOR		
	Number	% Column	Number	% Column	Number	% Column	Number	% Column	Number
NON-DBE	2	28.6%	6	6.7%	382	92.3%	352	73.3%	
MBE	3	42.8%	57	63.3%	17	4.1%	79	16.5%	
WBE	2	28.6%	27	30.0%	15	3.6%	49	10.2%	
Total	7	100.0%	90	100.0%	414	100.0%	480	100.0%	

Finally, the research identified other industries in which DBE truckers operated. Presumably, this information would help GDOT in determining how best to assist MBE truckers in diversifying to other industries. To conduct this investigation, we recorded all other NAICS classifications in which trucking subcontractors operated.

The results found that 35.1% of MBE subcontractors did not list a secondary industry in which they operated (Figure 6). Additionally, 28.0% indicated that they also operated in the highway, street and bridge construction industry; 14.0% recorded local general freight trucking as a secondary industry; and 10.5% indicated that they also operated in site preparation. Since these three industries are related to the trucking industry, this means that it may be difficult to diversify MBE subcontractors away from the trucking industry. However, the finding needs to be investigated further through personal interviews.

FIGURE 6 MOST SIGNIFICANT SECONDARY NAICS CLASSIFICATIONS FOR MBE SUBCONTRACTORS TO GDOT

NAICS Classification	NAICS Description	% MBE
No Secondary NAICS Indicated	N/A	35.1%
237310	Highway, Street and Bridge Construction	28.0%
484110	General Freight Trucking (Local)	14.0%
238910	Site Preparation	10.5%
All Other Secondary NAICS	Other NAICS combined	12.4%

Regarding WBEs, the results found that 14.8% did not list a secondary industry in which they operated (Figure 7). Additionally, 29.6% indicated that they also operated in the highway, street and bridge construction industry; 22.2% recorded local general freight trucking as a secondary industry in which they operated; and 18.5% indicated that they also operated in site preparation. These are the same three industries that were listed as the most prominent secondary industries for MBE truckers. This means that it may also be difficult to diversify WBE subcontractors away from the trucking industry.

FIGURE 7 MOST SIGNIFICANT SECONDARY NAICS CLASSIFICATIONS FOR WBE SUBCONTRACTORS TO GDOT

NAICS Classification	NAICS Description	% WBE
No Secondary NAICS Indicated	N/A	14.8%
237310	Highway, Street and Bridge Construction	29.6%
484110	General Freight Trucking (Local)	22.2%
238910	Site Preparation	18.5%
All Other Secondary NAICS	Other NAICS combined	14.9%

CONCLUSIONS

As a recipient of federal funds, GDOT must comply with Federal Regulation 49 C.F.R. Part 26 regarding the implementation of Federal Disadvantaged Business Enterprise (DBE) Program.

In compliance with the federal regulation, GDOT commissioned a Disparity Study to examine the contracting outcomes of DBEs. The Disparity Study was completed in 2012. It established statistical and anecdotal evidence that DBEs have encountered discrimination when pursuing GDOT contracts. However, in one industry (trucking and hauling), the Disparity Study found that 72% of the contract work awarded by GDOT went to DBEs. The current study sought to determine whether or not the DBE program, which was designed to remedy the effects of discrimination, has caused an undue concentration of DBE subcontractors in the trucking and hauling industry.

This study, as well as U.S. DOT, found that data available to measure overconcentration are insufficient. As such, overconcentration could not be determined but information was provided to help GDOT monitor the issue.

U.S. Department of Transportation (U.S. DOT) has expressed concern that DBE overconcentration might occur in work areas such as guardrail installation, fencing, landscaping, traffic control, and striping. In 2013, it solicited comments nationally regarding the overconcentration issue. The conclusion was that data from commenters or other sources were insufficient to support a finding that “overconcentration” is a serious, nationwide problem.

The study team collected prime contracting and subcontracting data that covered GDOT project activity between January 2009 and May 2014. However, GDOT has similar data limitations in measuring overconcentration. Specifically, to measure overconcentration, the number of DBEs working in the industry must be compared to the number of non-DBEs in the industry. However, GDOT does not require or collect data on trucking and hauling subcontracting work if it was performed “outside” projects limits. This means that the subcontracting utilization data in the trucking and hauling industry do not include many awards to non-DBE trucking firms, and, therefore, undercount their utilization.

Data limitations make it impossible to draw conclusions about the extent of overconcentration at GDOT. Additionally, a national review of state DOTs determined that there is hardly any definitive research on the issue of overconcentration. Within the trucking and hauling NAICS designation, non-DBEs comprised 6.7%, MBEs comprised 63.3%, and WBEs comprised 30.0% of GDOT sub-contractors. This represents the most accurate approximation available, but it still does not include many non-DBEs that perform work in the trucking industry.

The study also found that because the secondary industries where DBEs operate are closely related to the trucking industry, it may be difficult to diversify MBE subcontractors away from the trucking industry. The study recommended that GDOT commission a follow-up study of DBE concentration in trucking and hauling to identify ways of collecting and monitoring data on all trucking and hauling activities - including which occur “off project”. Finally, it should monitor data on trucking and hauling on an annual basis and make annual reports to FHWA on GDOT efforts to evaluate overconcentration.

RECOMMENDATIONS

The research recommended that GDOT conduct a follow-up study of DBE overconcentration in trucking and hauling that would achieve the following objectives:

- Identify ways of collecting and monitoring data on all trucking and hauling activities, including which occur “off project”.
- Ensure that methods of capturing off project trucking data do not create a paperwork burden on prime contractors and subcontractors.
- Conduct anecdotal interviews with non-DBE subcontractors in the trucking and hauling industry to document the extent to which they perform off project work.
- Collect anecdotal or numerical information/data that indicate that DBE goals in trucking work have unduly burdened contracting opportunities of non-DBEs.
- Conduct anecdotal interviews with DBEs to identify the extent to which they engage in off project trucking and hauling.
- Validate the secondary industries in which DBEs operate, especially industries that are outside of trucking and hauling.
- Determine the likelihood that DBEs can be successful in non-trucking and hauling work codes.
- Identify the kinds of support that would be required to create greater diversification among DBE truckers, assuming trucking and hauling overconcentration is an issue.
- Examine all trucking and hauling contracts (including off project awards) to determine if goals can be achieved in other areas within which DBEs are qualified and willing and able to perform work.

- Monitor data on trucking and hauling on an annual basis.
- Make annual reports to FHWA on GDOT efforts to evaluate overconcentration.

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