CHAPTER 5.
Availability Analysis

Keen Independent analyzed the availability of minority- and women-owned business enterprises (MBE/WBEs) that are ready, willing and able to perform NDOT and local agency prime contracts and subcontracts. NDOT can use availability results and other information from the study as it makes decisions about its future operation of the Federal DBE Program.

Chapter 5 describes the study team’s availability analysis in eight parts:

A. Purpose of the availability analysis;
B. Definitions of MBEs, WBEs, certified DBEs, potential DBEs, and majority-owned businesses;
C. Information collected about potentially available businesses;
D. Businesses included in the availability database;
E. MBE/WBE availability calculations on a contract-by-contract basis;
F. Availability results;
G. Base figure for NDOT’s overall DBE goal; and
H. Implications for any DBE contract goals.

Appendix D provides supporting information.

A. Purpose of the Availability Analysis

Keen Independent examined the availability of MBE/WBEs for transportation contracts to develop:

1. A benchmark used in the disparity analysis; and
2. The base figure for NDOT’s overall DBE goal.

1. Benchmark in the disparity analysis. The disparity analysis compares NDOT’s utilization of MBE/WBEs against an availability benchmark.

- The disparity analysis compares the percentage of NDOT contract dollars that went to minority- and women-owned firms (MBE/WBE “utilization”) to the percentage of dollars that might be expected to go to those businesses based on their availability for specific types and sizes of NDOT contracts (MBE/WBE “availability”).

- Comparisons between utilization and availability identify whether any MBE/WBE groups were underutilized based on their availability for NDOT work.
2. Base figure for NDOT’s overall DBE goal. Part of NDOT’s operation of the Federal DBE Program is establishing an overall goal for DBE participation in its FHWA-funded contracts.

- Setting an overall DBE goal begins with calculating a base figure for the availability of DBEs, similar to determining MBE/WBE availability in a disparity analysis.¹

- The base figure calculation only includes those MBE/WBEs that appear that they would be eligible for DBE certification (“potential DBEs”).
  
  > The Final Rule effective February 28, 2011 and the United States Department of Transportation’s (USDOT’s) “Tips for Goal-Setting” explain that minority- and women-owned firms that are not currently certified as DBEs but that could be DBE-certified should be counted as DBEs in the base figure.

  > However, businesses that have been denied certification, have been decertified or have graduated from the DBE Program should not be counted in the base figure.

The balance of Chapter 5 explains each step in determining the availability benchmarks and the base figure for NDOT’s overall DBE goal, beginning with definitions of terms.

B. Definitions of MBEs, WBEs, Certified DBEs, Potential DBEs and Majority-owned Businesses

The two results of the availability analysis discussed above — availability benchmark and base figure — use the same definitions of minority- and women-owned firms, but different accounting of potential DBEs.

MBE/WBEs. The availability benchmark and base figure availability results use the same definitions of minority- and women-owned firms (MBE/WBEs).

Race, ethnic and gender groups. As specified in 49 Code of Federal Regulations (CFR) Part 26, the study team separately examined utilization, availability and disparity results for businesses owned by:

- African Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans;
- Hispanic Americans;
- Native Americans; and
- Non-Hispanic white women.

Finally, “majority-owned businesses” are businesses that are not minority- or women-owned.

¹ 49 CFR Section 26.45 (c).
All MBE/WBEs, not only certified DBEs. When availability results are used as a benchmark in the disparity analysis, all minority- and women-owned firms are counted as such whether or not they are certified as DBEs or as MBEs or WBEs. Researching whether race- or gender-based discrimination has affected the participation of MBE/WBEs in contracting is properly analyzed based on the race/ethnicity and gender of business ownership and not on DBE certification status.

- Analyzing the availability and utilization of minority- and women-owned firms regardless of DBE/MBE/WBE certification allows one to assess whether there are disparities affecting all MBE/WBEs and not just certified businesses. Businesses may be discriminated against because of the race or gender of their owners regardless of whether they have successfully applied for certification.

- Moreover, the study team’s analyses of whether MBE/WBEs face disadvantages include the most successful, highest-revenue MBE/WBEs. A disparity study that focuses only on MBE/WBEs that are, or could be, DBE-certified would improperly compare outcomes for “economically disadvantaged” businesses with all other businesses, including both non-Hispanic white male-owned businesses and relatively successful MBE/WBEs. Limiting the analyses to a group of businesses that only includes low-revenue companies would have inappropriately made it more likely for the study team to observe disparities for MBE/WBE groups.

The courts that have reviewed disparity studies have accepted analyses based on the race, ethnicity and gender of business ownership rather than on DBE certification status.

Certified DBEs. Certified DBEs are businesses that are certified as such through NDOT or other DBE-certifying agencies in Nevada, which means that they are businesses that:

- Are owned and controlled by one or more individuals who are presumed to be both socially and economically disadvantaged according to 49 CFR Part 26; and

- Meet the gross revenue and personal net worth requirements described in 49 CFR Part 26.

Because implementation of the Federal DBE Program requires NDOT to track DBE utilization, Keen Independent reports utilization results for all MBE/WBEs and separately for those MBE/WBEs that are DBE-certified. The study does not use availability or disparity analysis results for certified DBEs and no such figures are calculated.

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2 In addition, 49 CFR Part 26 allows certification of white male-owned businesses as DBEs. Thus, disparity analyses based on certified DBEs might not purely be an analysis of disparities based on race/ethnicity and gender.

3 An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the analyses, any comparison of wages between minorities and non-minorities would more likely show disparities in wage levels.

4 The Federal DBE Program specifies that African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women of any race or ethnicity, and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration are presumed to be disadvantaged.
**Businesses owned by minority women.** Businesses owned by minority women presented a data coding challenge in the availability and utilization analyses. “WBEs” in this report refers to non-Hispanic white women-owned businesses. Businesses owned by minority women are included with the results for each minority group.

This definition of WBEs gives NDOT information to answer questions that sometimes arise pertaining to the utilization of non-Hispanic white women-owned businesses, such as whether the work that goes to MBE/WBEs disproportionately goes to businesses owned by non-Hispanic white women.

Keen Independent chose not to code businesses as both women-owned and minority-owned to avoid double-counting certain businesses when reporting total MBE/WBE utilization and availability. Creating groups of minority women-owned businesses that were distinct from minority male-owned businesses (e.g., African American women-owned businesses versus African American male-owned businesses) was also unworkable because some minority groups had utilization and availability so low that further disaggregation by gender made it even more difficult to interpret the results.

Keen Independent’s approach is consistent with court decisions that have considered this issue.

**Potential DBEs.** Potential DBEs are MBE/WBEs that are DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Section 26.65 (regardless of actual certification). Potential DBEs do not include businesses that have been decertified or had graduated from the DBE Program. Keen Independent examined the availability of potential DBEs as part of helping NDOT calculate the base figure of its overall DBE goal. Figure 5-1 provides further explanation of Keen Independent’s definition of potential DBEs.

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**Figure 5-1. Definition of potential DBEs**

To help NDOT calculate its overall DBE goal, Keen Independent did not include the following types of MBE/WBEs in its definition of potential DBEs:

- MBE/WBEs that had graduated from the DBE Program and not been recertified;
- MBE/WBEs that are not currently DBE-certified that had applied for certification with NDOT and had been denied; and
- MBE/WBEs that are not currently DBE-certified that appeared to have average annual revenues over the most recent three years so high as to deem them ineligible for DBE certification.

At the time of this study, the overall revenue limit for DBE certification was $22,410,000 based on a three-year average of gross receipts. There were lower revenue limits for specific subindustries according to the U.S. Small Business Administration (SBA) small business size standards. Some MBE/WBEs appeared to have exceeded those revenue limits based on information that they provided as part of availability interviews. The revenue categories used to classify firms reflect recent changes to the Table of Small Business Size Standards published by the SBA.

Business owners must also meet USDOT personal net worth limits for their businesses to qualify for DBE certification. The personal net worth of business owners was not available as part of this study and thus was not considered when determining potential DBE status.
**Majority-owned businesses.** Majority-owned businesses are businesses that are not owned by minorities or women (i.e., businesses owned by non-Hispanic white males).

- In the utilization and availability analyses, the study team coded each business as minority-, women-, or majority-owned.
- Majority-owned businesses included any non-Hispanic white male-owned businesses that were certified as DBEs.\(^5\)

**All other businesses.** The study team categorized all businesses that were not “potential DBEs” as “all other businesses” in the base figure analysis. All other businesses included all MBE/WBEs that were not currently DBE-certified and that:

- Had graduated from the DBE Program (and not been recertified);
- Had been denied DBE certification; or
- Appeared to be too large for DBE certification based on revenue size standards in 49 CFR Section 26.65.

All other businesses also included majority-owned businesses that were not DBE-certified (which in the availability analysis was all majority-owned businesses).

### C. Information Collected about Potentially Available Businesses

Keen Independent’s availability analysis focused on firms with Nevada locations that work in subindustries related to NDOT transportation-related construction and engineering contracts.

Based on review of NDOT and LPA Program prime contracts and subcontracts during the study period, the study team identified specific subindustries for inclusion in the availability analysis. Keen Independent used several methods to contact businesses within those subindustries to collect information about their availability for specific types, sizes and locations of NDOT and local agency prime contracts and subcontracts.

Keen Independent’s method of examining availability is sometimes referred to as a “custom census” and has been accepted in federal court. Figure 5-2 summarizes characteristics of Keen Independent’s custom census approach to examining availability.

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\(^5\) Keen Independent did not identify any DBE-certified white male-owned businesses that were utilized on or were potentially available for NDOT transportation contracts.
Overview of availability interviews. The study team conducted online and telephone interviews with business owners and managers to identify businesses that are potentially available for NDOT and local agency transportation prime contracts and subcontracts. Figure 5-3 summarizes the process for identifying businesses and then contacting them to complete interviews.

Keen Independent began by compiling lists of business establishments that:

- Previously identified themselves to NDOT as interested in learning about future work (by subscribing to NDOT’s Contractors Bulletin);

- Had contractors licenses in Nevada in fields pertinent to NDOT transportation construction contracts; and/or

- Dun & Bradstreet identified in certain transportation contracting-related subindustries in Nevada.

Keen Independent used additional databases to supplement the contact information provided in the above sources.

Online and telephone interviews. Figure 5-3 outlines the methods Keen Independent used to complete interviews with businesses possibly available for NDOT work.

- When the source data included email addresses for firms, the study team sent emails that contained an interview explanation and request (addressed from the NDOT Executive Director Rudy Malfabon) and a link to the online interview.

- Source data for some firms only included phone numbers. The study team contacted those firms by telephone to ask them to participate in the online interviews (identifying NDOT as the organization requesting the information). Firms indicating over the phone that they were not interested or involved in transportation contracting work were not asked to complete the other interview questions.

- Some firms immediately completed online interviews. For firms not immediately responding, the study team executed intensive follow-up over many weeks through email, telephone or both methods. Many interviews were completed by telephone.

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6 The study team offered business representatives the option of completing interviews via fax or e-mail if they preferred not to complete interviews via telephone.

7 D&B’s Hoover’s database is accepted as the most comprehensive and complete source of business listings in the nation. Keen Independent collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most related to the transportation contracts that NDOT awarded during the study period.
Businesses could also learn about the availability interviews or complete the interviews via other methods:

- Businesses could complete the interview via fax.
- Keen Independent posted information about the online interviews on the disparity study website maintained throughout the project. Interested companies could download a questionnaire from the website.
- Keen Independent also maintained a “hot line” that anyone could call for more information about any aspect of the study.
- After completing an online interview, some business owners asked if they could complete another online interview for a second business they owned. Keen Independent responded to these requests by adding the second company to the online interview list.

**Information collected in availability interviews.** Interview questions covered many topics about each organization, including:

- Status as a private business (as opposed to a public agency or not-for-profit organization);
- Status as a subsidiary or branch of another company;
- Types of transportation contract work performed (from grading to traffic control for construction and from highway design to surveying for engineering-related work);
- Qualifications and interest in performing transportation-related work for NDOT and local governments in Nevada;
- Qualifications and interest in performing transportation-related work as a prime contractor or as a subcontractor (or trucking company or materials supplier);
- Past work in Nevada as a prime contractor or as a subcontractor, trucker or supplier;
- Ability to work in specific geographic regions of Nevada (Northwest, Northeast and South);
- Largest prime contract or subcontract bid on or performed in Nevada in the previous five years;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

Appendix D provides an availability interview instrument.
**Considering businesses as potentially available.** The study team asked business owners and managers that they successfully contacted several questions concerning the types of work that their companies performed; their past bidding history; and their qualifications and interest in working on contracts for NDOT and local government agencies, among other topics. Keen Independent considered businesses to be potentially available for NDOT transportation prime contracts or subcontracts if they reported possessing all of the following characteristics:

a. Being a private business (as opposed to a public agency or not-for-profit organization);

b. Performing work relevant to NDOT transportation contracting;

c. Having bid on or performed transportation-related public or private sector prime contracts or subcontracts in Nevada in the previous five years; and

d. Qualifications for and interest in work for NDOT or local governments.\(^8\)

Keen Independent also considered the following information to determine if businesses were potentially available for specific contracts or subcontracts that NDOT and local agencies awarded during the study period:

e. Qualifications and interest in prime contract and/or subcontractor, supplier or trucking work;

f. Ability to work in a specific region of Nevada;

g. Largest contract bid on or performed in Nevada in the previous five years; and

h. Year the business was established.

**D. Businesses Included in the Availability Database**

After conducting availability interviews with thousands of Nevada businesses, the study team developed a database of information about businesses that are potentially available for NDOT transportation contracting work. The study team used the availability database to produce availability benchmarks to:

- Determine whether there were any disparities in NDOT and local agency utilization of MBE/WBEs during the study period; and

- Help calculate a base figure for NDOT’s overall DBE goal.

Data from the availability interviews allowed Keen Independent to develop a representative depiction of businesses that are qualified and interested in NDOT work, but it should not be considered an exhaustive list of every business that could potentially participate in NDOT transportation work. Appendix D provides a detailed discussion about why the database should not be considered an exhaustive list of potentially available businesses.

\[^8\] That information was gathered separately for prime contract and subcontract work.
Figure 5-4 presents the number of businesses that the study team included in the availability database for each racial/ethnic and gender group. The study team’s research identified 671 businesses available for specific transportation contracts that NDOT and local agencies awarded during the study period. Of those businesses 168 (25%) were MBEs or WBEs.

Because results are based on a simple count of firms with no analysis of availability for specific NDOT contracts, they only reflect the first step in the availability analysis.

<table>
<thead>
<tr>
<th>Race/ethnicity and gender</th>
<th>Number of firms</th>
<th>Percent of firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American-owned</td>
<td>13</td>
<td>1.9 %</td>
</tr>
<tr>
<td>Asian-Pacific American-owned</td>
<td>8</td>
<td>1.2</td>
</tr>
<tr>
<td>Subcontinent Asian American-owned</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>Hispanic American-owned</td>
<td>51</td>
<td>7.6</td>
</tr>
<tr>
<td>Native American-owned</td>
<td>6</td>
<td>0.9</td>
</tr>
<tr>
<td>Total MBE</td>
<td>81</td>
<td>12.1 %</td>
</tr>
<tr>
<td>WBE (white women-owned)</td>
<td>87</td>
<td>13.0</td>
</tr>
<tr>
<td>Total MBE/WBE</td>
<td>168</td>
<td>25.0 %</td>
</tr>
<tr>
<td>Total majority-owned firms</td>
<td>503</td>
<td>75.0</td>
</tr>
<tr>
<td>Total firms</td>
<td>671</td>
<td>100.0 %</td>
</tr>
</tbody>
</table>

Source: Keen Independent availability analysis.

E. MBE/WBE Availability Calculations on a Contract-by-Contract Basis

Keen Independent analyzed information from the availability database to develop dollar-weighted availability estimates for use as a benchmark in the disparity analysis and in helping NDOT set its overall DBE goal.

- Dollar-weighted availability estimates represent the percentage of NDOT transportation contracting dollars that MBE/WBEs might be expected to receive based on their availability for specific types and sizes of NDOT transportation-related construction and engineering prime contracts and subcontracts.

- Keen Independent’s approach to calculating availability was a bottom up, contract-by-contract process of “matching” available firms to specific prime contracts and subcontracts.

Steps to calculating availability. Only a proportion of the businesses in the availability database were considered potentially available for any given NDOT construction or engineering prime contract or subcontract (referred collectively as “contract elements”). The study team first examined the characteristics of each specific contract element, including type of work, location of work, contract size and contract date. The study team then identified businesses in the availability database that perform work of that type, in that location, of that size, in that role (i.e., prime contractor or subcontractor), and that were in business in the year that the contract element was awarded.
The study team identified the specific characteristics of each of the 1,896 NDOT and local agency prime contracts and subcontracts included in the utilization analysis and then took the following steps to calculate availability for each contract element:

1. For each contract element, the study team identified businesses in the availability database that reported that they:
   - Are qualified and interested in performing transportation-related work in that particular role for that specific type of work for NDOT or local agencies;
   - Had performed work in the particular role in Nevada within the past five years;
   - Are able to do work in that geographic location;
   - Had bid on or performed work of that size in Nevada in the past five years; and
   - Were in business in the year that the contract or task order was awarded.

2. For that contract element, the study team then counted the number of MBEs (by race/ethnicity), WBEs and majority-owned businesses among all businesses in the availability database that met the criteria specified in Step 1.

3. The study team translated the numeric availability of businesses for the contract element into percentage availability (as described in Figure 5-5).

The study team repeated those steps for each contract element examined as part of the disparity study. The study team multiplied the percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of overall availability of MBE/WBEs and estimates of availability for each MBE/WBE group. Figure 5-5 provides an example of how Keen Independent calculated availability for a specific subcontract associated with a construction prime contract that NDOT awarded during the study period.

**Improvements on a simple “head count” of businesses.** Keen Independent used a “custom census” approach to calculating MBE/WBE availability for NDOT work rather than using a simple “head count” of MBE/WBEs (i.e., simply calculating the

### Figure 5-5.
**Example of an availability calculation for a NDOT subcontract**

There was an electrical subcontract for about $22,000 on a 2010 NDOT-awarded contract in District 2. To determine the overall availability of MBE/WBEs for that subcontract, the study team identified businesses in the availability database that:

- Were in business in 2010;
- Indicated that they performed electrical work related to road projects;
- Reported working or bidding on subcontracts in Nevada in the past five years;
- Reported bidding on work of similar or greater size in the past five years;
- Reported ability to perform work in Northwestern Nevada; and
- Reported qualifications and interest in working as a subcontractor on NDOT transportation projects.

There were 55 businesses in the availability database that met those criteria. Of those businesses, 19 were MBEs or WBEs. MBE/WBE availability for the subcontract was 35 percent (i.e., 19/55 x 100 = 35%).
percentage of all Nevada transportation contracting businesses that are minority- or women-owned). Using a custom census approach typically results in lower availability estimates for MBEs and WBEs than a headcount approach due in large part to Keen Independent’s consideration of “bid capacity” in measuring availability and because of dollar-weighting availability results for each contract element (a large prime contract has a greater weight in calculating overall availability than a small subcontract). The largest contracts that MBE/WBEs have bid on or performed in Nevada tend to be smaller than those of other businesses. Therefore, MBE/WBEs are less likely to be identified as available for the largest prime contracts and subcontracts.

There are several important ways in which Keen Independent’s custom census approach to measuring availability is more precise than completing a simple head count.

Keen Independent’s approach accounts for type of work. USDOT suggests calculating availability based on businesses’ abilities to perform specific types of work. USDOT gives the following example in Part II F of “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”:

> For instance, if 90 percent of your contract dollars will be spent on heavy construction and 10 percent on trucking, you should weight your calculation of the relative availability of firms by the same percentages.9

The study team took type of work into account by examining 31 different subindustries related to construction and engineering as part of estimating availability for NDOT work.

Keen Independent’s approach accounts for qualifications and interest in transportation-related prime contract and subcontract work. The study team collected information on whether businesses are qualified and interested in working as prime contractors, subcontractors, or both on NDOT and local agency transportation work, in addition to the consideration of several other factors related to prime contracts and subcontracts (e.g., contract types, sizes and locations):

- Only businesses that reported being qualified for and interested in working as prime contractors were counted as available for prime contracts;
- Only businesses that reported being qualified for and interested in working as subcontractors were counted as available for subcontracts; and
- Businesses that reported being qualified for and interested in working as both prime contractors and subcontractors were counted as available for both prime contracts and subcontracts.

Keen Independent’s approach accounts for the size of prime contracts and subcontracts. The study team considered the size — in terms of dollar value — of the prime contracts and subcontracts that a business bid on or received in the previous five years (i.e., bid capacity) when determining whether to count that business as available for a particular contract element. When counting available businesses for a particular prime contract or subcontract, the study team considered whether

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businesses had previously bid on or received at least one contract of an equivalent or greater dollar value in Nevada in the previous five years.

Keen Independent’s approach is consistent with many recent, key court decisions that have found relative capacity measures to be important to measuring availability (e.g., Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.; Western States Paving Company v. Washington State DOT; Rathe Development Corp. v. U.S. Department of Defense; and Engineering Contractors Association of S. Fla. Inc. vs. Metro Dade County).

Keen Independent’s approach accounts for the geographic location of the work. The study team determined the location where work was performed for NDOT and local agency contracts. As part of the availability interviews, the study team collected information on whether businesses could perform work in:

- Southern Nevada (such as the Las Vegas area);
- Northwestern Nevada (such as the Reno area); and
- Northeastern Nevada (such as in the Elko or Ely areas).

Keen Independent’s approach generates dollar-weighted results. Keen Independent examined availability on a contract-by-contract basis and then dollar-weighted the results for different sets of contract elements. Thus, the results of relatively large contract elements contributed more to overall availability estimates than those of relatively small contract elements. Keen Independent’s approach is consistent with USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program,” which suggests a dollar-weighted approach to calculating availability.

**F. Availability Results**

Keen Independent used the custom census approach described above to estimate the availability of MBE/WBEs and majority-owned businesses for 1,896 transportation-related construction and engineering prime contracts and subcontracts that NDOT and local agencies awarded during the study period.

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Figure 5-6 presents overall dollar-weighted availability estimates by MBE/WBE group for those contracts. Overall, MBE/WBE availability for NDOT transportation contracts is 7.4 percent. Native American-owned firms (2.8%), Hispanic American-owned businesses (2.4%) and WBEs (1.2%) had highest availability percentages among all MBE/WBE groups. Note that availability estimates varied when the study team examined different subsets of those contracts.

### Figure 5-6.
Overall dollar-weighted availability estimates by MBE/WBE group

<table>
<thead>
<tr>
<th>Race/ethnicity and gender</th>
<th>Utilization benchmark (availability %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American-owned</td>
<td>0.3 %</td>
</tr>
<tr>
<td>Asian-Pacific American-owned</td>
<td>0.0</td>
</tr>
<tr>
<td>Subcontinent Asian American-owned</td>
<td>0.7</td>
</tr>
<tr>
<td>Hispanic American-owned</td>
<td>2.4</td>
</tr>
<tr>
<td>Native American-owned</td>
<td>2.8</td>
</tr>
<tr>
<td>Total MBE</td>
<td>6.2 %</td>
</tr>
<tr>
<td>WBE (white women-owned)</td>
<td>1.2</td>
</tr>
<tr>
<td>Total MBE/WBE</td>
<td>7.4 %</td>
</tr>
</tbody>
</table>

**Note:**

Results are for FHWA- and state-funded NDOT and LPA Program transportation contracts for 2007 through June 2012.

Numbers rounded to nearest tenth of 1 percent, so availability of Asian-Pacific American-owned firms (0.03%) shown as “0.0%.”

For more detail and results by group, see Figure K-2 in Appendix K.

**Source:**
Keen Independent availability analysis.

**Availability by region.** Some people interviewed as part of this study reported that DBE availability was lower in some parts of the state, especially District 3 (Northeastern Nevada). Although there may be a small number of DBEs in District 3, Keen Independent’s availability results did not vary much between NDOT districts. Because contracts and subcontracts were smaller in District 3, and many firms outside District 3 reported ability to work in that part of the state, MBE/WBE availability for District 3 contracts were similar to the state-wide results in Figure 5-6.

### G. Base Figure for NDOT’s Overall DBE Goal

Establishing a base figure is the first step in calculating an overall goal for DBE participation in NDOT’s FHWA-funded transportation contracts. Keen Independent calculated the base figure using the same availability database and approach described above. For the base figure, calculations focus on potential DBEs (including currently certified DBEs) and only included FHWA-funded prime contracts and subcontracts. Keen Independent’s approach to calculating NDOT’s base figure is consistent with:

- Court-reviewed methodologies in several states, including Washington, California, Illinois, and Minnesota;
- Instructions in The Final Rule effective February 28, 2011 that outline revisions to the Federal DBE Program; and
- USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

For details about NDOT’s base figure for its overall DBE goal, see Chapter 9.
Base figure for FHWA-funded contracts. Keen Independent’s availability analysis indicates that the availability of potential DBEs for NDOT’s FHWA-funded transportation contracts is 4.5 percent from review of FHWA-funded NDOT and LPA Program contracts awarded from 2010 through June 2012. This most-recent time period is more representative of NDOT’s future FHWA-funded contracts going forward than the 2007-June 2012 study period as a whole.

NDOT might consider 4.5 percent as the base figure for its overall goal for DBE participation.\textsuperscript{12}

Differences from overall MBE/WBE availability. The availability of potential DBEs for FHWA-funded contracts is less than the overall MBE/WBE availability presented in Figure 5-6. Keen Independent’s calculation of overall MBE/WBE availability includes three groups of MBE/WBEs that the study team did not count as potential DBEs when calculating the base figure:

- MBE/WBEs that graduated from the DBE Program (that were not recertified);
- MBE/WBEs that are not currently DBE-certified that had applied for DBE certification with NDOT and had been denied; and
- MBE/WBEs that are not currently DBE-certified that reported annual revenues over the most recent three years so high as to deem them ineligible for DBE certification.

In addition, the study team’s analyses for calculating the base figure for FHWA-funded contracts only included FHWA-funded prime contracts and subcontracts. The calculations for overall MBE/WBE availability included both FHWA- and state-funded transportation prime contracts and subcontracts.

Additional steps before NDOT determines its overall DBE goal. NDOT must consider whether to make a “step-2” adjustment to the base figure as part of determining its overall DBE goal. Step-2 adjustments can be upward or downward, but there is no requirement for NDOT to make a step-2 adjustment as long as the agency can explain what factors it considered and why no adjustment was warranted. Chapter 9 discusses factors that NDOT might consider in deciding whether to make a step-2 adjustment to the base figure.

H. Implications for Any DBE Contract Goals

If NDOT chooses to use DBE contract goals in the future, it might use information from the availability analysis when setting any contract-specific DBE goals. It might also use information from the Nevada Unified Certification Program (NUCP), a current bidders list or other sources that could provide information about the availability of MBE/WBEs to participate in particular contracts.

The Federal DBE Program provides agencies that use DBE contract goals with some flexibility in how they set DBE contract goals. DBE goals on some contracts might be higher or lower than the overall DBE goal. In addition, there may be some FHWA-funded contracts for which setting DBE contract goals would not be appropriate.

\textsuperscript{12} NDOT should review whether the types, sizes and locations of FHWA-funded contracts that the agency awarded during the 2010-June 2012 study period are similar to those anticipated for the time covered by the new overall DBE goal.