

Oregon Department of Transportation 2015 Disparity Study



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External Stakeholder Group
Kickoff Meeting

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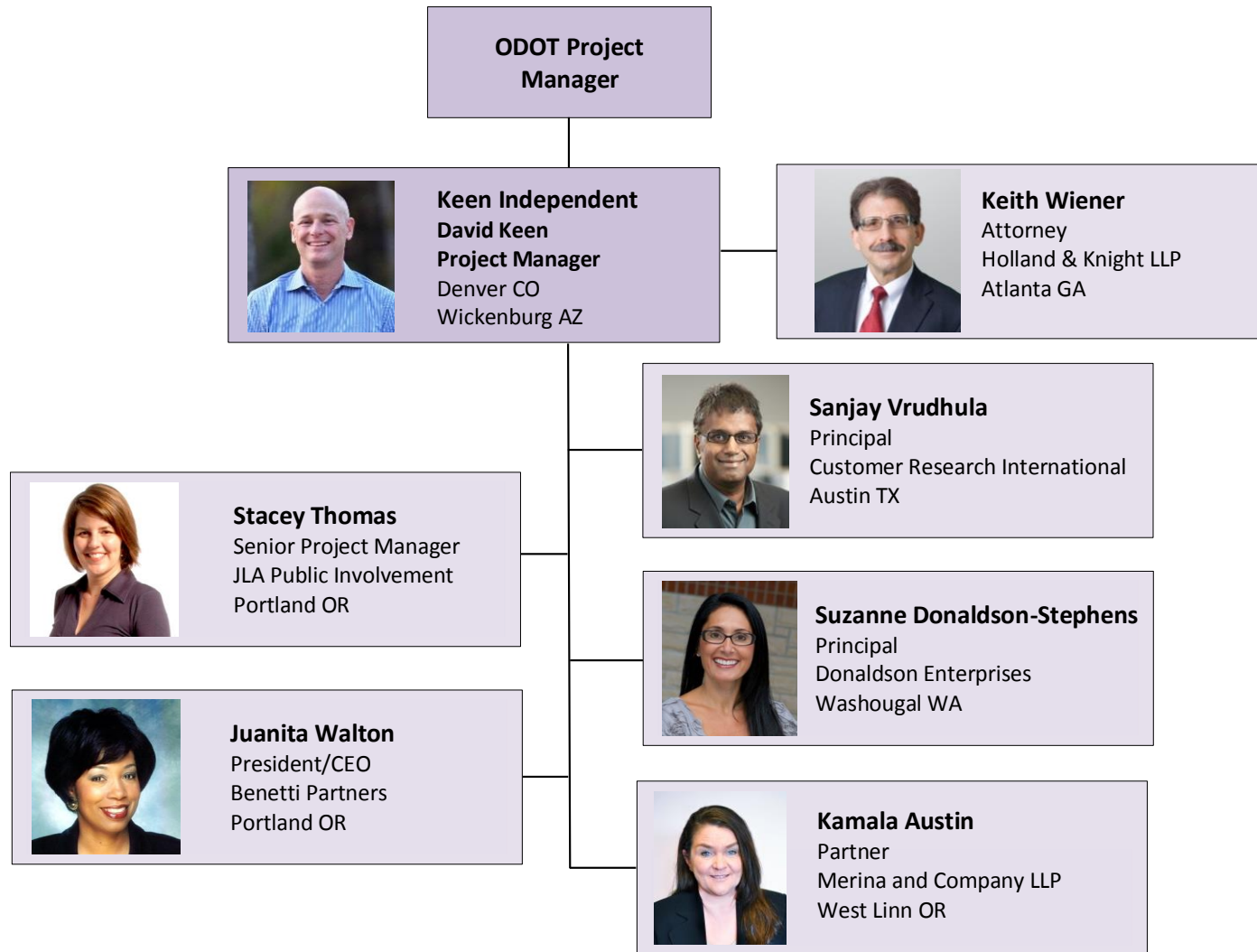
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Objectives for External Stakeholder Group Kickoff Meeting

1. Introduce key study team members
2. Explain role as an External Stakeholder Group member
3. Review USDOT requirements for state DOT implementation of the Federal DBE Program and explain why a study is necessary
4. Define certain terms and concepts
5. Explain key components and schedule for the disparity study
6. Discuss role of QSP
7. Explore how we will interact with businesses and groups outside ODOT
8. Discuss immediate action items

1. Keen Independent study team



1. Team (cont.)



2. Role as an External Stakeholder Group member

- Perspective on marketplace conditions is valuable
- Insights on program components also very useful
- Can help provide input from and communicate study approach and results to interested groups
- Therefore, we ask that External Stakeholder Group members:
 - Serve as a sounding board as we perform the study
 - Provide your own perspectives about marketplace conditions, business assistance needs, contracting practices, components of the Federal DBE Program, etc.
 - Point us to information and provide help when needed
 - Give your feedback as we present preliminary results

3. Why conduct a disparity study?

- ODOT must implement the Federal DBE Program, per 49 CFR Part 26
- Disparity study provides information to help ODOT:
 - Set overall goal for DBE participation on FHWA-funded contracts
 - Consider whether ODOT can achieve overall DBE goal solely through neutral means
 - If ODOT needs to continue DBE contract goals, assess the specific race/ethnic/gender groups eligible for that program component
- USDOT instructed agencies to conduct disparity studies after 2005 Ninth Circuit decision in *Western States Paving v. Washington State DOT*
 - Example of successful defense of Program: *AGC, San Diego v. Caltrans*
 - Dave Keen led Caltrans disparity study and provided expert testimony, Keith Wiener was legal advisor, analyzed qualitative information and provided litigation support
- Also, outside review of ODOT practices and other policies is useful

4. Terms and concepts for the disparity study

- DBE
 - Certified disadvantaged business enterprise
 - Can include white male-owned firms
 - Does not include all minority- and women-owned firms (including those too large to meet certification requirements)
 - “Potential DBE” is a minority- or woman-owned firm that appears to be eligible for DBE certification
- Minority-owned firm (MBE)
 - 51%+ owned by African American, Asian-Pacific American, Subcontinent Asian American, Hispanic American or Native American, includes minority women-owned firms
 - Our definition includes certified and non-certified firms
- White woman-owned firm (WBE)
 - 51%+ owned by white women, includes certified and non-certified firms
- Certified MBE, WBE or ESB
 - Certified as such under State M/W/ESB Program
- Majority-owned firm
 - Non-MBE or WBE firm
 - Excludes non-profits and government agencies

4. Terms and concepts (cont.)

- Availability analysis
 - What firms are available to perform specific types, sizes and locations of ODOT and subrecipient prime contracts and subcontracts, and what is their race/ethnicity/gender ownership?
 - What percent of contract dollars might MBE/WBEs (by group) be expected to receive based on their relative availability and the types, sizes and locations of prime contracts and subcontracts?
- Utilization analysis
 - What is the utilization of MBEs and WBEs (by group) in an agency's contracts (including subcontracts), especially when DBE goals do not apply? (% of \$)
- Disparity analysis
 - Is utilization of minority- or women-owned firms (by group) less than what might be expected from the availability analysis
- Case studies of past contracting
 - Are MBEs and WBEs bidding on prime contracts, proposing as primes on engineering-related contracts? Are there barriers in ODOT's bid process?

4. Terms and concepts (cont.)

- Marketplace analysis
 - Census data and other data on entry and advancement of minorities and women within the contracting industry, business formation, access to capital and business success
 - From the availability interviews, business owners' answers to questions concerning potential barriers in the marketplace
 - In-depth personal interviews with business owners, trade groups and others
 - Input from public meetings held throughout the state
- Analysis of potential remedies
 - Any changes to contracting policies and practices
 - Small business programs, business development programs, technical assistance and other neutral remedies
 - As appropriate, race- and gender-conscious programs such as DBE contract goals

4. Example of component of availability analysis

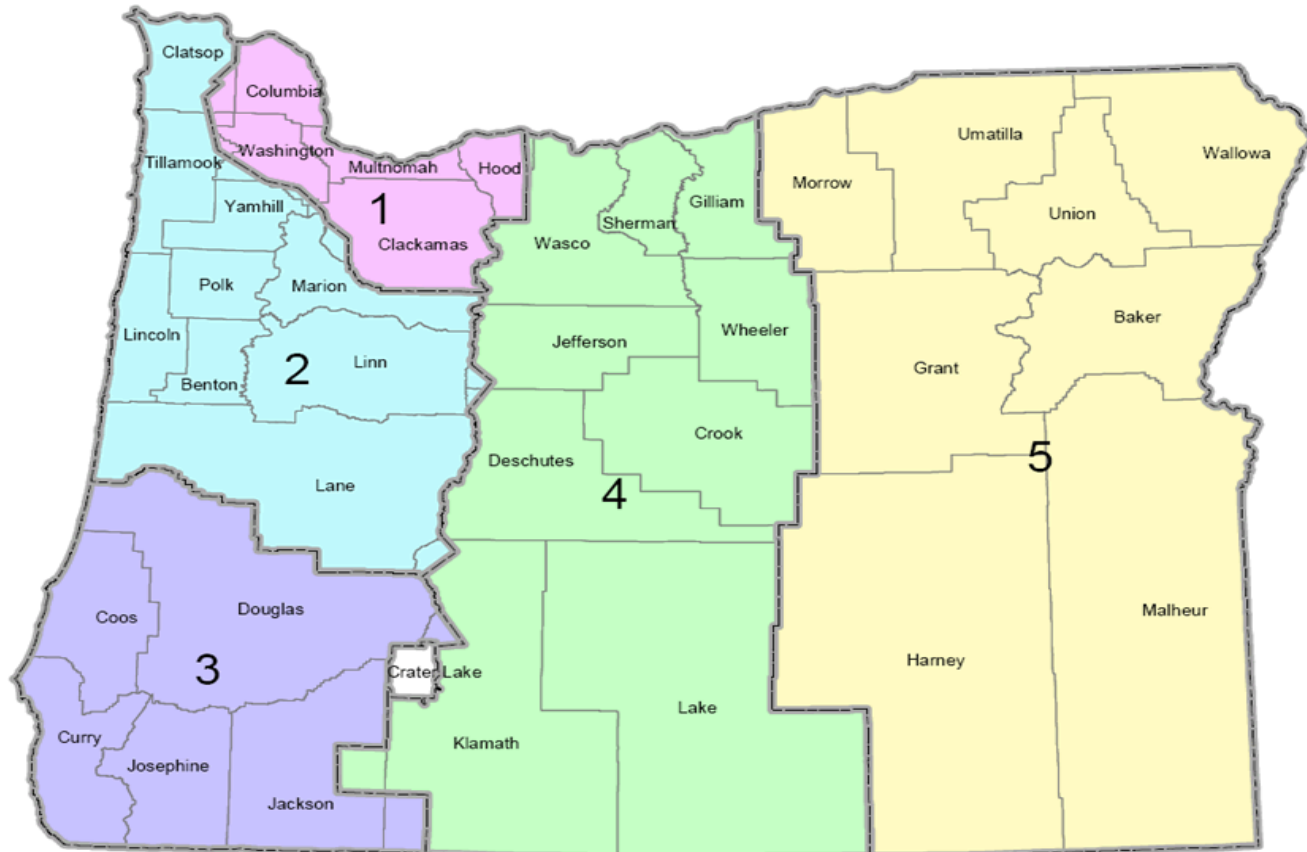
- Electrical subcontract for about \$22,000 on a 2010 state DOT-awarded subcontract in a specific District
- Examined firms that:
 - a. Were in business in 2010
 - b. Indicated that they performed electrical work related to transportation projects
 - c. Reported working or bidding on subcontracts in Arizona in the past 7 years
 - d. Reported bidding on work of similar or greater size in the past 7 years
 - e. Reported ability to perform work in that region of Oregon
 - f. Reported qualifications and interest in working as a subcontractor on ODOT transportation contracts
- 55 businesses in the availability database that met those criteria ... of those, 19 were MBEs or WBE. MBE/WBE availability was 35% ($19/55 = 35\%$)
- Dollar weight result and added to availability calculations for other contracts and subcontracts

4. Examples of in-depth interview questions

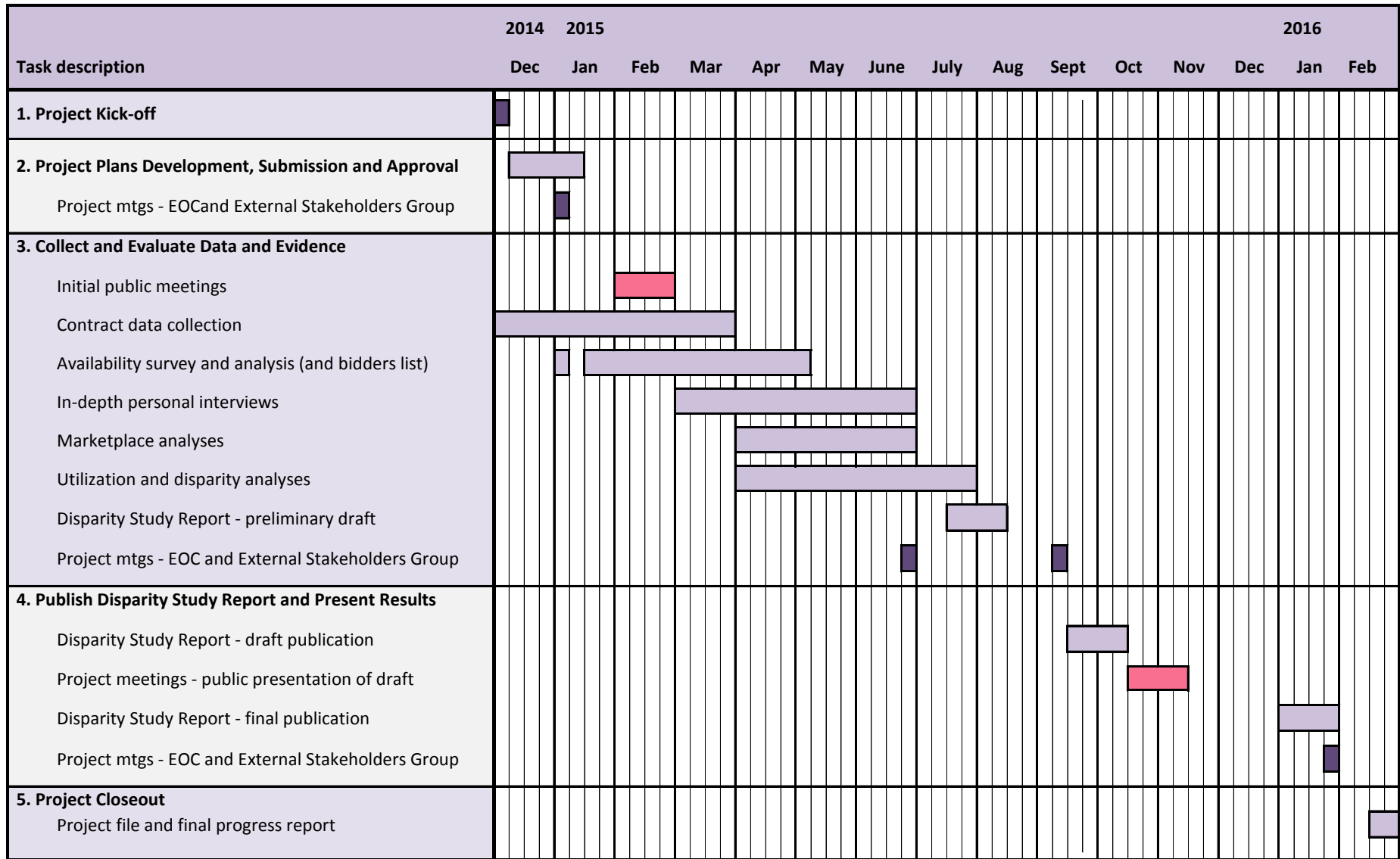
- How the firm became established, effects of economic downturn, any barriers pursuing public/private sector work?
- Experience working as primes/subs, experiences with other primes/subs?
- Keys to success - employees, equipment, financing, bonding, insurance, relationships?
- Potential barriers - learning about work, marketing, licensing, contract size, prequalification, bidding, timely payment, experiences with ODOT, other?
- Any unfair treatment - bid shopping, bid manipulation, unfavorable work environments, double-standards, other?
- Any stereotypical attitudes, “good ol’ boy” networks, other allegations of discriminatory treatment, other barriers?
- Insights regarding neutral measures - technical assistance, mentor-protégé programs, financing assistance, pre-bid conferences, vendor fairs, etc.?
- Insights regarding ODOT or other public agency DBE programs?
- DBE certification - process, advantages/disadvantages, any fronts?

4. Terms and concepts (cont.)

- Contracting regions within the state for availability and utilization analyses (need input)



5. Key tasks and schedule



7. How will interact with external groups

- Provide information to outside groups through website, email address, press release and other means
- Discussion of ODOT contract data, other data, policies and procedures
- Meetings with trade associations
- Telephone interviews with 10,000+ businesses in the Oregon transportation contracting industry
- 65 in-depth personal interviews with business owners and managers, industry group representatives and others
- Opportunities for any interested individuals or groups to submit comments
- 4 initial and 6 later public meetings throughout the state
- Public presentations to ODOT
- Distribution of draft and final report to the public

8. In next six weeks, ODOT/Keen Independent will ...

- Review electronic construction data received, explore A/E data sources
- Fine-tune communications, QA/QC and data collection plans
- Plan early 2015 public meetings
- Develop website, email address, hotline
- Start preparing legal framework and analysis
- Review materials concerning ODOT contracting practices and implementation of the Federal DBE Program and M/W/ESB Program
- Analyze distribution of contract dollars by location of contracts and by types of work
- Provide first draft of availability interview instrument
- Discuss first draft of interview guide for in-depth personal interviews
- Hold January 6 meeting with EOC and External Stakeholder Group