

# ODOT DBE Advisory Committee Analysis and Recommendations

July 2023

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## Overview

In September 2020, the Oregon Transportation Commission provided funding for the Oregon Department of Transportation's Office of Civil Rights (OCR)<sup>1</sup> to strengthen Disadvantaged Business Enterprise (DBE) supportive services. OCR used this funding to identify and address barriers DBE firms face when competing for work and contracting with ODOT.

To center DBE perspectives in this process, ODOT established an advisory committee made up of representatives from DBE firms, large firms who often serve as prime contractors, and industry partners with a mission to helping promote and develop business for DBE firms. This first committee cohort met virtually eight times between September 2022 and July 2023, each meeting building on the previous content to culminate in recommendations to ODOT. Recommendations referenced the following existing policies and plans:

- [ODOT Strategic Action Plan](#)
- [2020 Oregon Minority Contractors Task Force](#)
- [ODOT BIPOC Contracting Expansion Anti-Oppression Barriers Analysis - October 2021](#)
- [2022 Disparity Study by Keen Independent Research](#)
- [State of Oregon Racial Justice Council](#)
- Oregon Minority Contracting Task Force

During the founding year of the advisory committee (July 2022 through July 2023), efforts to form and facilitate the committee were supported by ODOT's Office of Equity and Civil Rights (OECR) and consultants from PRR, collectively referenced as "the project team" in the report.

Future advisory committee cohorts will continue this work, while also monitoring ODOT's progress toward implementing recommendations from prior cohorts.

This report outlines the work of the advisory committee and provides recommendations for future cohorts.

The [Disadvantaged Business Enterprise Program \(DBE\)](#) is a legislatively mandated USDOT program that applies to Federal-aid transportation dollars expended on federally-assisted contracts issued by USDOT recipients such as State Transportation Agencies (STAs). The U.S. Congress established the DBE program in 1982 to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts, and
- Assist the development of firms that can compete successfully in the marketplace outside of the DBE program.

This program defines a DBE as a small business that are at least 51% owned by:

- Minorities: Blacks, Hispanics, Native Americans, Asian-Pacific Americans and Subcontinent Asian Americans;
- Women; and
- Other individuals on a case-by-case basis.

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<sup>1</sup> This ODOT department went through reorganization during the project. When the project started, the department was named the Office of Civil Rights (OCR), then, during the reorganization, the name changed to Office of Equity and Civil Rights (OECR). The department is referred to as OECR throughout this report.

The committee identified six priority barriers and identified recommendations to ODOT to address them.

Barrier	Recommendations
<p>1. Classification for Indigenous origins from countries in North, Central, and South America</p>	<p>Make recommendations to FHWA that they apply the racial definition of Indigenous used by the Census Bureau and OMB. Specifically, request expansion of the current classification to include individuals native to North, Central, and South America. Ensure this definition does not compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA.</p>
	<p>Initiate a process for recognition on state funded projects that do not need to comply with FHWA DBE program rules. Ensure this definition does not compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA.</p>
<p>2. Difficulty obtaining task approvals</p>	<p>Create clear and measurable standards and share them with contractors.</p>
	<p>Incorporate training and accountability for inspectors. Identify specific pathways for holding inspectors accountable.</p>
	<p>Coordinate with ODOT Construction Section to include recommendation that subcontractors be included in inspector meetings with primes to avoid decision-making happening without subcontractor awareness or involvement. Implement a program or channel for DBEs to raise issues or concerns that they are experiencing.</p>
	<p>Address barrier as a systemic issue within the Construction Section that impacts all contractors and subcontractors.</p>
	<p>Consider a task approval department with dedicated capacity to maintain the task approval process and support DBEs through it.</p>

Barrier	Recommendations
<p>3. Challenges with open communication with primes and access to prime agreements</p>	<p>Establish and communicate to DBEs standardized expectations that all prime contractors need to adhere to regarding information sharing with subcontractors. Include these expectations in all contracts between ODOT, primes, and subcontractors. Specifically:</p> <ul style="list-style-type: none"> <li>○ Require all DBE contracts to include language specifying that subcontractors will have access to the prime contract.</li> <li>○ Include scoring of open communication and information sharing with subcontractors in Prime Contractor Performance Evaluations.</li> <li>○ Require prime contractors to include DBEs in pre-construction meetings and weekly project coordination meetings.</li> <li>○ Commit to holding prime contractors accountable and enforce compliance to DBE program standards. Establish penalties on prime firms for not adhering to information sharing expectations.</li> </ul>
<p>4. Payment schedule and lack of prompt pay</p>	<p>Implement both short-term and long-term project systems that track and report project payments made by ODOT and its prime firms to (sub)contractors and assess penalties for late payments. Reinforce use of systems that allow DBE firms to monitor payments.</p> <p>Make invoices subcontractors submit to primes visible to ODOT.</p> <p>Add ODOT point-of-contact for DBEs to every contract and shift the follow-up with the prime from the DBE to the ODOT point-of-contact.</p> <p>Provide a payment option other than pay-when-paid.</p> <p>Include the topic of payments in pre-construction meeting and status check meetings that include the prime, sub(s), and construction inspector.</p> <p>ODOT follows up with DBE firms about how the system is working for them within three months after AASHTOWare implementation.</p>

Barrier	Recommendations
5. Low bid contracting requirements	Create more contracting processes that waive the lowest bid requirements, maybe other criteria, including best value or “lowest and best” to provide for contracting flexibility needed to allow DBE firms to compete.
	Modify the mentor-protégé program for the partnership to center on small firms winning more work after competing.
6. Access to work under bundled Architectural & Engineering (A&E) and construction contracts	Explore ways for ODOT Project Delivery and/or other relevant departments to unbundle more projects.
	Explore opportunities for Agency use of other (alternative) contracting methods that may offer smaller work packages suitable for DBE contractors.
	Explore ways for ODOT to incentivize and/or penalize prime firms for how they unbundle (or bundle) contracts.

## Committee recruitment

ODOT set out to create an advisory committee with 12 representatives from DBE firms, at least three industry partners with a mission to helping promote and develop business for DBE firms, and two to four large firms that often work with ODOT and serve as primes on large contracts that require sub-consultants to support their work.

OECR created a list of businesses with whom they had worked on DBE-focused issues, including those who participated in previous efforts to identify and illuminate barriers to DBE contracting. Because state disparity studies found that minority owned businesses, meaning businesses owned by people who are Black, Indigenous, and People of Color (BIPOC), experience the most barriers, the team prioritized including such businesses, including those with Minority Business Enterprise (MBE) certification.

The project team identified 29 small businesses, 32 representatives from large firms that often prime, and seven industry partners to invite to participate in the committee. OECR staff reached out to them starting with an email in early August 2022, following up with phone calls later that month.

This first committee cohort met the benchmarks established by ODOT, including 13 DBE business representatives, four industry partners, and three large firms. Of the 13 DBE businesses represented in this cohort<sup>2</sup>:

- 10 were certified Minority Owned Enterprises (MBEs).
- One was minority owned (BIPOC) owned, but not MBE certified.
- One was veteran owned.
- Six were Women Owned Business Enterprises (WBEs).

OECR and their consultant, PRR, administered and supported the committee with technical advisors from several Oregon state agencies.

The full list of members, advisors, and project team members, including their meeting attendance is in Appendix A.

### Compensation

ODOT committed to compensating committee members not otherwise compensated for their participation in the advisory committee as described in the [Equitable Engagement Compensation Plan](#). It appears committee members were not able to access these funds. Based on conversations with DBE committee members, the process is not clear, and they did not get the support they needed to access the funds.

## Committee meeting structure and work program

With an established committee, ODOT OECR administered the work program with support from consultant PRR, who developed the facilitation approach, including the decision-making process, and facilitated the committee meetings. The first meeting was focused on developing a charter for the committee that would serve the first and future cohorts. The charter outlines the purpose of the

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<sup>2</sup> The total is more than 13 as some businesses have multiple certifications.

advisory committee, identifies measures of success, describes the committee structure, restates the meeting schedule, outlines roles and responsibilities of all actors involved in the advisory committee, defines the decision-making process, provides guidance for committee communications, provides information about compensation available to advisory committee members, and includes background information that informed the advisory committee's work.

The group charter is in Appendix B.

#### Meeting schedule and format

The DBE Advisory Committee met once a month from September 2022 through March 2023 (except in December), took a break in April and May, and then reconvened for meetings in June and July 2023. Committee members were consulted on meeting scheduling, including preferences for day of the week and time of day. Meetings were two hours long and held on Zoom.

To allow time for DBE firm representatives to have focused time amongst themselves, some meetings were limited to only the 13 DBE representatives. Other meetings included the entire committee to invite robust conversation with a diverse group.

#### Work program

In the first two meetings in September and October 2022, the committee drafted and then finalized six priority barriers to address with this cohort. In subsequent meetings between November 2022 and March 2023, the committee developed recommendations for removing or reducing those priority barriers.

The project team supported the committee to come to agreement in its recommendations by:

- Presenting clear, transparent information
- Encouraging clarifying questions
- Supporting constructive conflict
- Inviting objections and disagreement during the process
- Making space for all committee members to be heard
- Identifying and including any areas of disagreement not resolved in the recommendation papers

The group used a consent agreement decision-making process. Consistent with that, the recommendations papers describe areas of agreement and disagreement and clarify where and why there was disagreement.

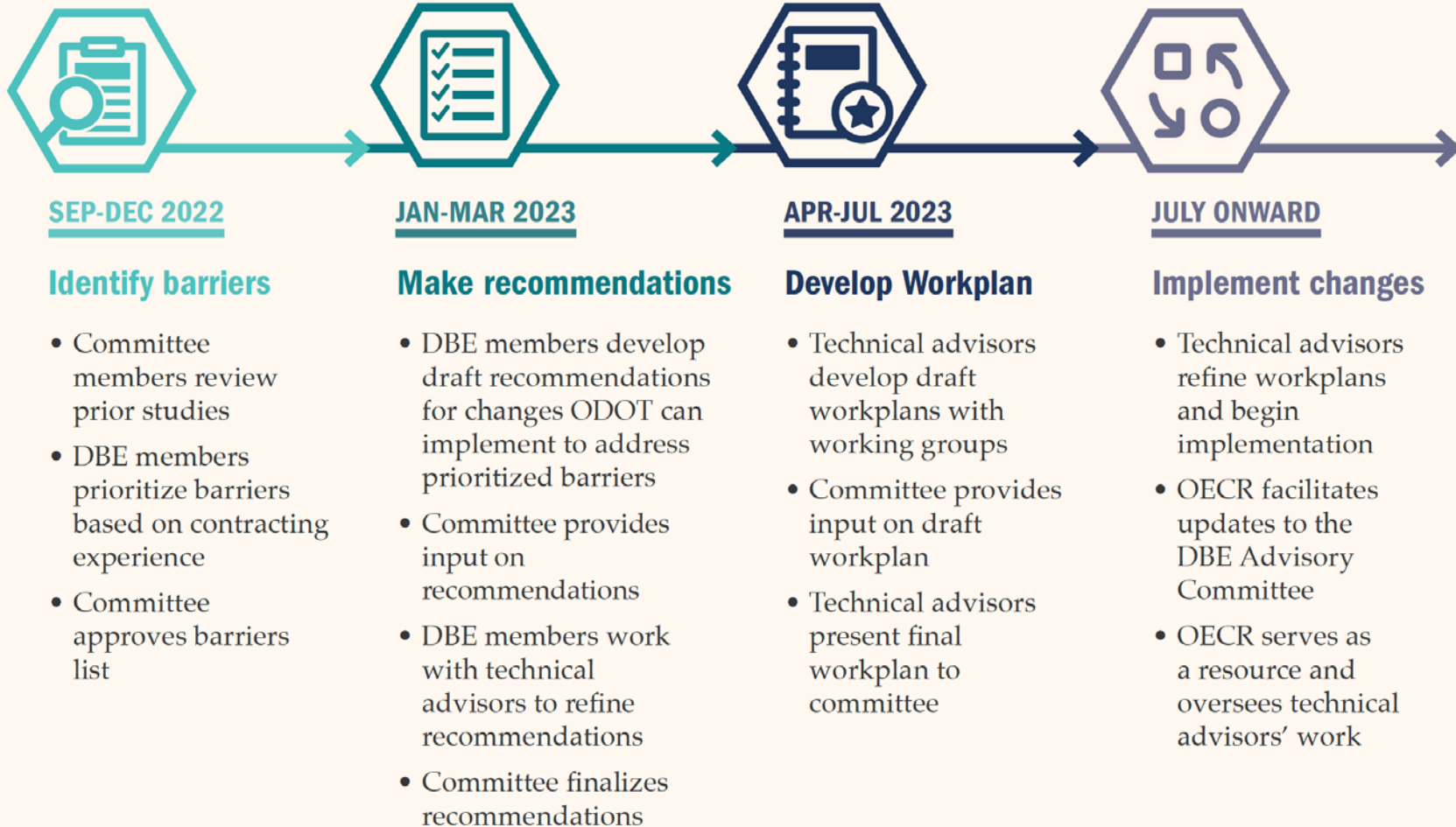
The consent decision-making process is described in Appendix C.

In April 2023, the advisory committee broke into six working groups, one per barrier, each working with an ODOT staff member to serve as technical advisors. These ODOT technical advisors developed plans to implement recommendations and collaborating with their working groups to ensure workplans addressed committee priorities.

The committee reconvened as a whole in June 2023 to review the draft workplans and provide input. In July, the committee finalized the next steps for this work.

Summaries from each meeting are in Appendix D.

## DBE Advisory Committee Process



## Recommendations

The first cohort of ODOT's DBE Advisory Committee identified the following barriers to DBE contracting with ODOT based on their experiences and previous disparity studies:

1. Classification for Indigenous origins from countries in North, Central, and South America
2. Difficulty obtaining task approvals
3. Challenges with open communication with primes and access to prime agreements
4. Payment schedule and lack of prompt pay
5. Low bid contracting requirements
6. Access to work under bundled Architectural & Engineering (A&E) and construction contracts

The advisory committee developed these recommendations to address each of these barriers:

1. Classification for Indigenous origins from countries in North, Central, and South America
  - Make recommendations to FHWA that they apply the racial definition of Indigenous used by the Census Bureau and OMB. Specifically, request expansion of the current classification to include individuals native to North, Central, and South America. Ensure this definition does not compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA.
  - Initiate a process for recognition on state funded projects that do not need to comply with FHWA DBE program rules. Ensure this definition does not compromise the rights and access of recognized sovereign nations and people who are indigenous to the USA.
2. Difficulty obtaining task approvals
  - Create clear and measurable standards and share them with contractors.
  - Incorporate training and accountability for inspectors. Identify specific pathways for holding inspectors accountable.
  - Coordinate with ODOT Construction Section to include subcontractors in inspector meetings with primes to avoid decision-making happening without subcontractor awareness or involvement. Implement a program or channel for DBEs to raise issues or concerns that they are experiencing.
  - Address barrier as a systemic issue within the Construction Section that impacts all contractors and subcontractors.
  - Consider a task approval department with dedicated capacity to maintain the task approval process and support DBEs through it.
3. Challenges with open communication with primes and access to prime agreements



- Establish and communicate to DBEs standardized expectations that all prime contractors need to adhere to regarding information sharing with subcontractors. Include these expectations in all contracts between ODOT, primes, and subcontractors. Specifically:
  - Require all DBE contracts to include language that subcontractors will have access to the prime contract.
  - Include scoring of open communication and information sharing with subcontractors in Prime Contractor Performance Evaluations.
  - Require prime contractors to include DBEs in pre-construction meetings and weekly project coordination meetings.
  - Commit to holding prime contractors accountable and enforce compliance to DBE program standards. Establish penalties on prime firms for not adhering to information sharing expectations.
- 4. Payment schedule and lack of prompt pay
  - Implement both short term and long-term project systems that track and report project payments made by ODOT and its prime firms to (sub)contractors and assess penalties for late payments. Reinforce use of systems that allow DBE firms to monitor payments.
  - Make invoices subcontractors submit to primes visible to ODOT.
  - Add ODOT point-of-contact for DBEs to every contract and shift the follow-up with the prime from the DBE to the ODOT point-of-contact.
  - Provide a payment option other than pay-when-paid.
  - Include the topic of payments in pre-construction meeting and status check meetings that include the prime, sub(s), and construction inspector.
  - ODOT follows up with DBE firms about how the system is working for them within three months after AASHTOWare implementation.
- 5. Low bid contracting requirements
  - Create more contracting processes that waive the lowest bid requirements, maybe other criteria, including best value or “lowest and best” to provide for contracting flexibility needed to allow DBE firms to compete.
  - Modify the mentor-protégé program for the partnership to center on small firms winning more work after completing.
- 6. Access to work under bundled Architectural & Engineering (A&E) and construction contracts
  - Explore ways for ODOT Project Delivery and/or other relevant departments to unbundle more projects.
  - Explore opportunities for Agency use of other (alternative) contracting methods that may offer smaller work packages suitable for DBE contractors.

- Explore ways for ODOT to incentivize and/or penalize prime firms for how they unbundle (or bundle) contracts.

Committee members then worked closely with ODOT technical advisors to refine the recommendations and develop work plans for implementation.

The full barriers and recommendations papers and draft work plans are in Appendix E.

## Cohort exit interview key themes

The project team invited committee members to participate in one-on-one conversations to review their experience participating in the committee, share any concerns about the process, and offer suggestions for future cohorts.

Six DBE business representatives, one industry partner, and one large firm participated in these conversations. During these conversations, we invited the committee members to continue through 2024 on the advisory committee. Most agreed to continue.

Key themes:

- *Appreciation.* Committee members expressed effusive appreciation for the opportunity to share their perspectives, be heard by ODOT staff, to learn things about ODOT's inner workings, and help advance work to reduce barriers to DBE's working with ODOT.
- *Increased trust.* Most committee members who participated in the exit interviews expressed that they had low trust for ODOT at the beginning of the process. Those that had low trust expressed that it had increased through this process. At least one DBE business representative said their small business is more likely to pursue work with ODOT after this experience.

Committee members shared that the following contributed to building trust:

- Seeing the process roll out the way that the facilitation described at the beginning
- Having the minor changes communicated overtly and transparently
- Seeing the workplans progress
- *Learning.* Committee members shared that they have a better understanding of ODOT's internal structures, reasons things move slowly inside ODOT, and what resources are available to small businesses who want to work with ODOT. They also want to see more of this sort of opportunity to learn and to share information.
- *Desire for continued information-sharing.* Committee members want ODOT to share progress on the recommendations and the overall committee when they are no longer on the committee. They asked to be kept informed, including informed of opportunities to help in the future. One member noted that for them a lack of communication "makes it seem like nothing is happening." One member suggested ODOT provide quarterly updates to past committee members when they have finished their terms.
- *Need for more role clarity.* Some committee members found the roles of technical advisors, large firms, and industry partners unclear. They recommended more clarity for future cohorts.

- *Desire to continue engaging in small groups.* Several folks expressed a desire for ODOT to continue with work that emphasizes small groups. They also recommended small groups be diverse and reflective of different experiences and identities.

## Recommendations for future cohorts

Based on observations from the facilitation team, input from technical advisors, conversations with advisory committee members, and consultation with OECR staff, the facilitation team has the following recommendations for ODOT's work with future cohorts.

### ODOT follow-through

Consistently throughout the process, small business representatives emphasized the importance of ODOT following through with their commitments and addressing the barriers that were identified in multiple disparity studies. ODOT will benefit from genuinely assessing internal capacity before making commitments to ensure they are able to fulfill any commitments, increasing the likelihood of meeting the goals of this program.

The work ODOT is doing to address barriers to DBEs is not complete until ODOT communicates this work, how it is progressing, and the impacts to external audiences. Communicating what you are doing is part of follow-through. When you communicate regularly, honestly, and transparently with small businesses, they are more likely to trust you.

### Compensation

Most small businesses have low profit margins and do not have flexibility to take the time needed to participate in opportunities like the DBE Advisory Committee. ODOT will benefit from compensating committee members not otherwise compensated for their participation in the advisory committee. This needs to include staff support to guide committee members through the process and follow up to make sure they receive the compensation.

### Second cohort: 2023 - 2024

The 2022 to 2023 cohort identified six barriers with recommendation for ODOT to address. This is a significant body of work for ODOT. To support ODOT's successful implementation of the recommendations, the project team recommends the 2023 to 2024 cohort focus on the current six recommendations.

The project team recommends inviting 2022-23 cohort members to continue the work for the next year to advance the planning and initial implementation of the current recommendations.

To support this, the project team recommends that the committee meet monthly in their working groups with their technical advisors, and meet quarterly as a full committee on the same schedule as 2022-23, second Wednesdays between 8:30 and 10:30 a.m.

Working group meetings one hour

Quarterly meetings no more than two hours

To further support this, the project team recommends OECR staff convene the technical advisors monthly to share updates and resources and to coordinate where there is overlap in the workplans.

Future cohorts

For cohorts starting 2024-25, the project team recommends the following:

*Limiting the work program to two barriers.* This will allow the group to dig deeper into the barriers, learn more about the current conditions from the technical advisors, and make more progress in workplans during their one-year term. This also supports ODOT's ability to respond and demonstrate progress on the recommendations in a timely manner.

*Break the advisory committee into working groups earlier in the program.* This will help advisory committee members to understand the internal landscape at ODOT as they finalize their recommendations. It will also provide the technical advisors with more time to understand how the DBE businesses are affected by the barriers to strengthen their ability to effectively advise the working groups.

*Take the time to communicate the committee's work to the larger DBE community, to the larger consulting community, to other Oregon agencies, and to other ODOT staff.*

*Convene technical advisors monthly to collaborate on technical content and on the best ways to support and engage the advisory committee members.* The ODOT technical advisors need support to successfully engage with the committee members. Integrate them early and provide them support throughout the process.

*Have meetings at a regular schedule and communicate it early and often.*

*Continue to recruit a combination of small businesses who have DBE certification and small businesses that do not.* This will help ODOT understand the diverse experiences of small businesses who are potential contractors.

*Continue to prioritize small businesses that have ownership structures and identities that are consistent with those identified as having the most barriers in the disparity studies, especially businesses owned by people who are Black, Indigenous, and other People of Color.* When recruiting small business members emphasize the following additional considerations:

- Diverse lived experience, specifically:
  - Members of religious minorities
  - People who are lesbian, gay, bisexual, transgender, and queer (LGBTQ+)
  - People with disabilities
  - People who live in rural areas
  - People otherwise adversely affected by persistent poverty or inequality
- Representation across ODOT regions (Regions 1-5)

*Develop an onboarding system with clear descriptions of the work and expectations of membership.* These materials would include a description of ODOT's purpose for convening the DBE Advisory Committee, a member profile form, a job description, a meeting schedule, summary of prior cohort work, and a summary of barriers identified through processes such as the disparity study.

*Consider focusing on specific types of contracts.* Different project types have different barriers and needs. Consider focusing on specific types of contracts, with either entire cohorts or small groups in the same cohort focused on construction contracts, architecture and engineering contracts, and other types of contracts to deepen the conversation.

#### Staffing support

After supporting this work for the last year, we recommend that ODOT make a clear staff plan to support this work effectively. The recommended staffing is three core staff people who will average 15 to 20 hours per week across the team to implement this work.<sup>3</sup>

We recommend the three core staff people include a lead facilitator, a co-facilitator, and a program coordinator. Having these as distinct roles will help each person focus on their core responsibilities. We further recommend professional facilitators to fill the roles of the lead facilitator and co-facilitator. Skilled facilitators will be more able to lead participants effectively through these processes. If the internal ODOT staff who will fill these roles do not have these skills already, the facilitation team recommends ODOT invest in facilitation training for the lead and co-facilitators.

A more comprehensive description of the core responsibilities and qualifications for each of these roles in Appendix E.

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<sup>3</sup> This is a total number of hours for these three individuals and will likely be unevenly distributed depending on the specific tasks. These hours do not include oversight or internal review and approval process or technical support for virtual meeting.