

2017 New Orleans Disparity Study

First Oversight Committee Meeting



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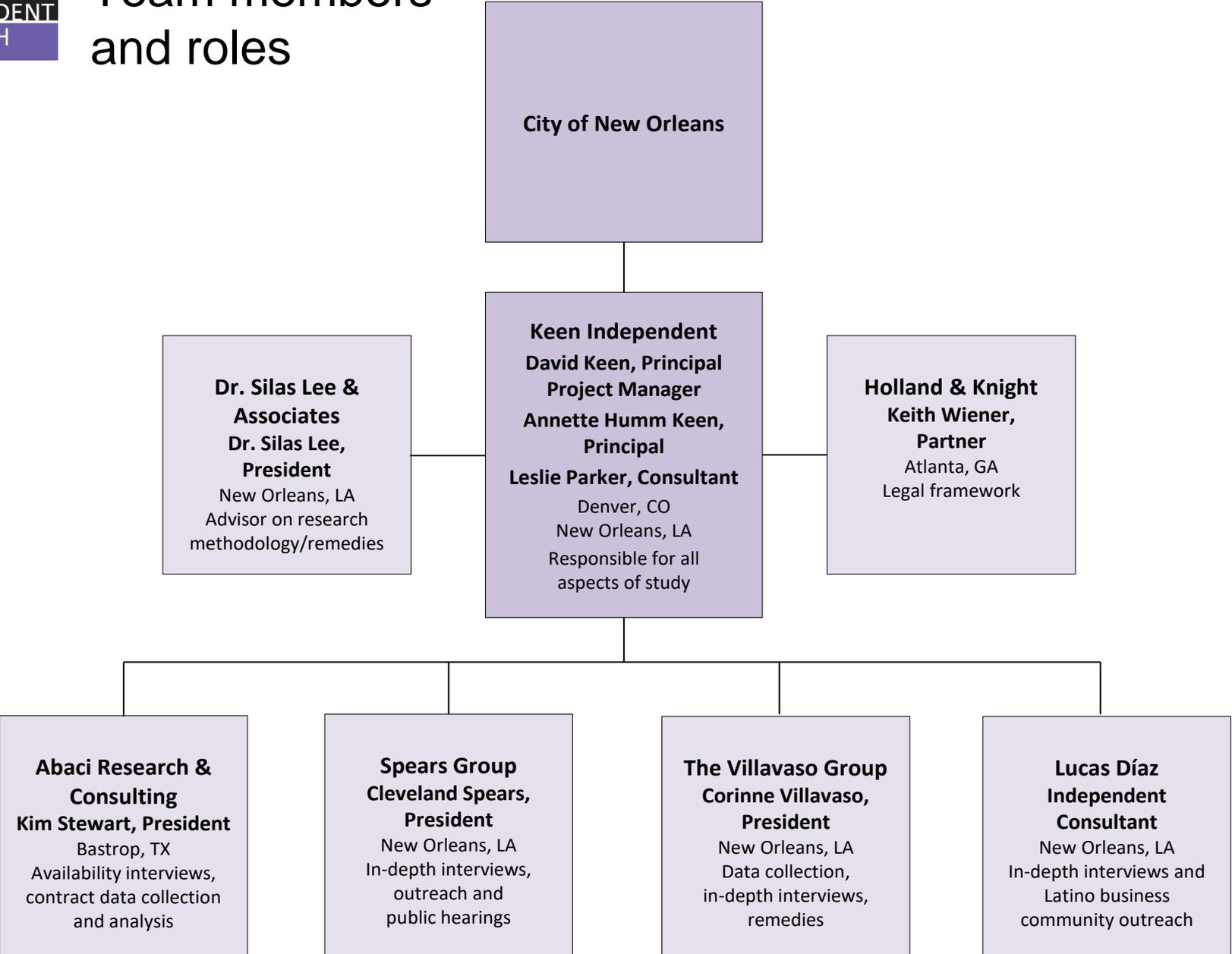
Objectives for Oversight Committee Meeting

1. Introduce key study team members
2. Explain role of the Oversight Committee
3. Discuss communications protocols, reporting and plan for future meetings
4. Review basics of the disparity study
5. Define certain terms and concepts
6. Discuss legal framework for the study
7. Explain key tasks, deliverables and schedule
8. Receive input on existing local information and key groups
9. Obtain input on key issues to be examined

Role as an Oversight Committee member

- Perspective on marketplace conditions is valuable
- Insights on program components also useful
- Can help provide input from and communicate study to interested groups
- We ask that Oversight Committee 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 programs, etc.
 - Point us to information and provide help when needed
 - Review the draft report in detail when released for public input

Team members and roles



Communications protocols/reporting

- Keen Independent team will develop website content, fact sheets and other communications materials throughout the process
- Keen Independent will prepare notes from Oversight Committee meetings
- Follow protocols when communicating through emails ...
and you can always call us
- Most of your direct communication with the study team will be with:
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Why conduct a disparity study?

- 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the strict scrutiny standard of review for race-conscious programs adopted by state and local governments
- Disparity study will examine whether there is evidence of discrimination against minority- and women-owned firms in the marketplace, and
If so, what remedies might be appropriate
- Also, outside review of City practices and other policies is useful

Terms and concepts for the disparity study

- Disadvantaged Business Enterprise (DBE), from USDOT Federal DBE Program
 - 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 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 SLDBEs
 - Certified as such under City or other agency’s SLDBE Program
- Majority-owned firm
 - Non-MBE or WBE firm, excludes non-profits and government agencies

Terms and concepts (cont.)

- Availability analysis
 - What firms are available to perform specific types, sizes of City prime contracts and subcontracts, and what is their race/ethnicity/gender ownership?
 - What percent of City contract dollars might MBE/WBEs (by group) be expected to receive based on their relative availability and the types and sizes of prime contracts and subcontracts?
 - Calculate for each contract, then dollar-weight results
- Utilization analysis
 - What is the utilization of MBEs and WBEs (by group) in the City's contracts (including subcontracts)? (% of \$)
- Disparity analysis
 - Is utilization of minority- or women-owned firms (by group) less than what might be expected from the availability analysis

Terms and concepts (cont.)

- Relevant geographic market area
 - Area that captures most contract/procurement activity (using federally-defined economic areas)

- Marketplace analysis
 - Data on entry and advancement of minorities and women as employees, business formation, access to capital and business success
 - From the availability surveys, business owners' answers to questions concerning potential barriers in the marketplace
 - In-depth personal interviews and focus groups with business owners, trade groups and others
 - Input from public forums

- Analysis of potential remedies
 - Any changes to contracting policies and practices
 - Small business programs, business development programs, technical assistance and other neutral remedies
 - Programs for businesses owned by persons with disabilities or veterans
 - As appropriate, race- and gender-conscious programs such as MBE/WBE contract goals program

Example of component of availability analysis

- Electrical subcontract for about \$22,000 on a 2010 state DOT-awarded subcontract in a specific region
- 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 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
 - f. Reported qualifications and interest in working as a subcontractor on 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

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 public agencies?
- 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 public agency programs?
- Certification - process, advantages/disadvantages, any “fronts”?

Legal framework

1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson*

- Established that **strict scrutiny** is applied to a local or state government program that is race- or ethnic- conscious

Other standards of legal review:

- Intermediate scrutiny – sometimes applied for gender-conscious programs
- Rational basis test – applied for small business programs

Strict Scrutiny Analysis for MBE Programs

Compelling governmental interest

Evidence of local or state-government specific identified discrimination in the contracting and procurement market

Quantitative evidence

Qualitative evidence

Narrow tailoring

Serious, good faith consideration of alternative race-neutral measures

Flexibility/duration of race-conscious remedy

Relationship of MBE goals to relevant market

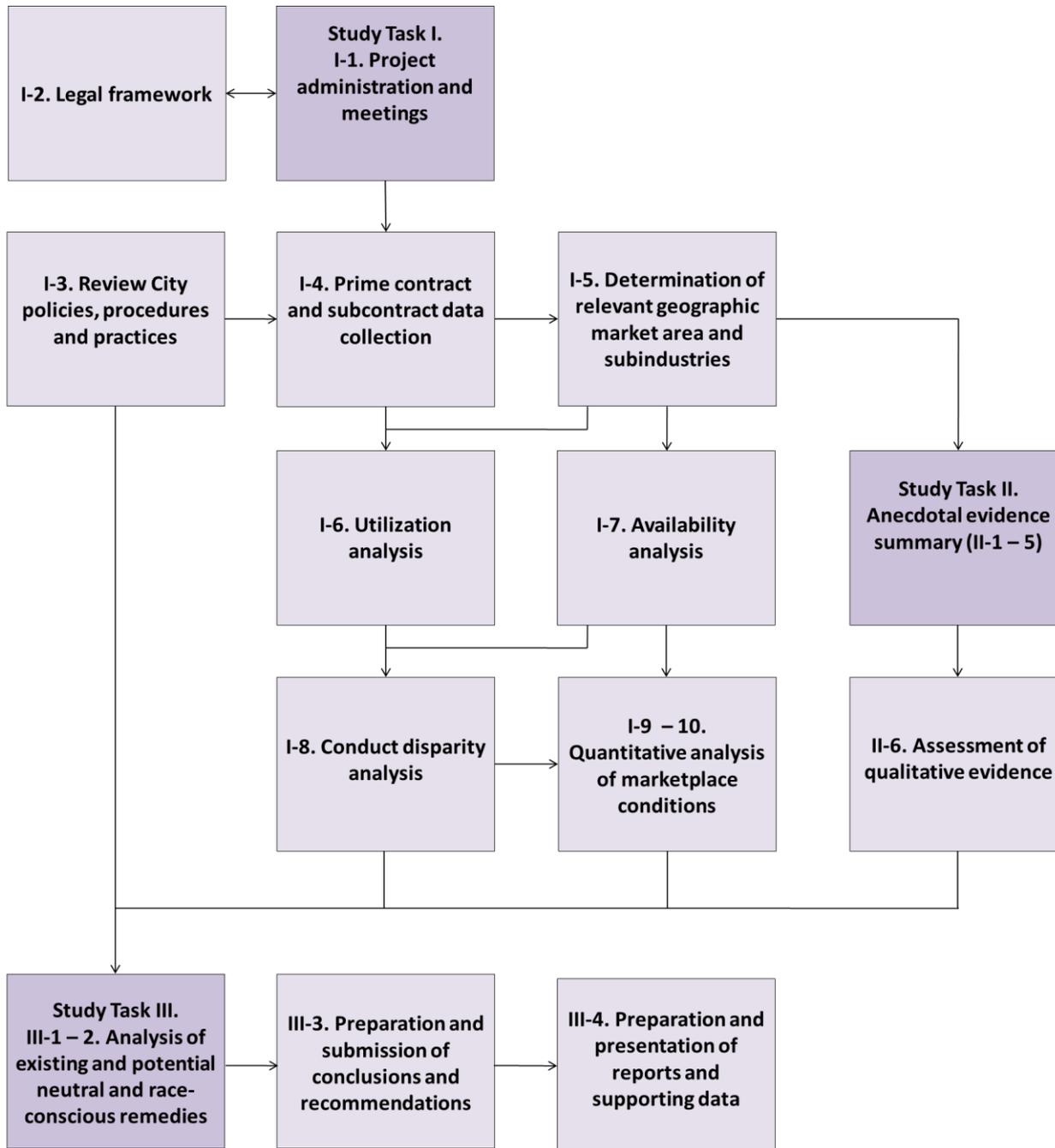
Impact of remedy on third parties

Program applies only to those groups for which there is evidence of discrimination

Cases in 5th Circuit Court of Appeals and state court

- 1999 Fifth Circuit Court of Appeals decision in *W.H. Scott Constr. Co. v. City of Jackson*
- 2016 federal district court decision in *Kossmann v. City of Houston*
- 1996 Supreme Court of Louisiana decision in *Louisiana AGC, Inc. vs. State of Louisiana*

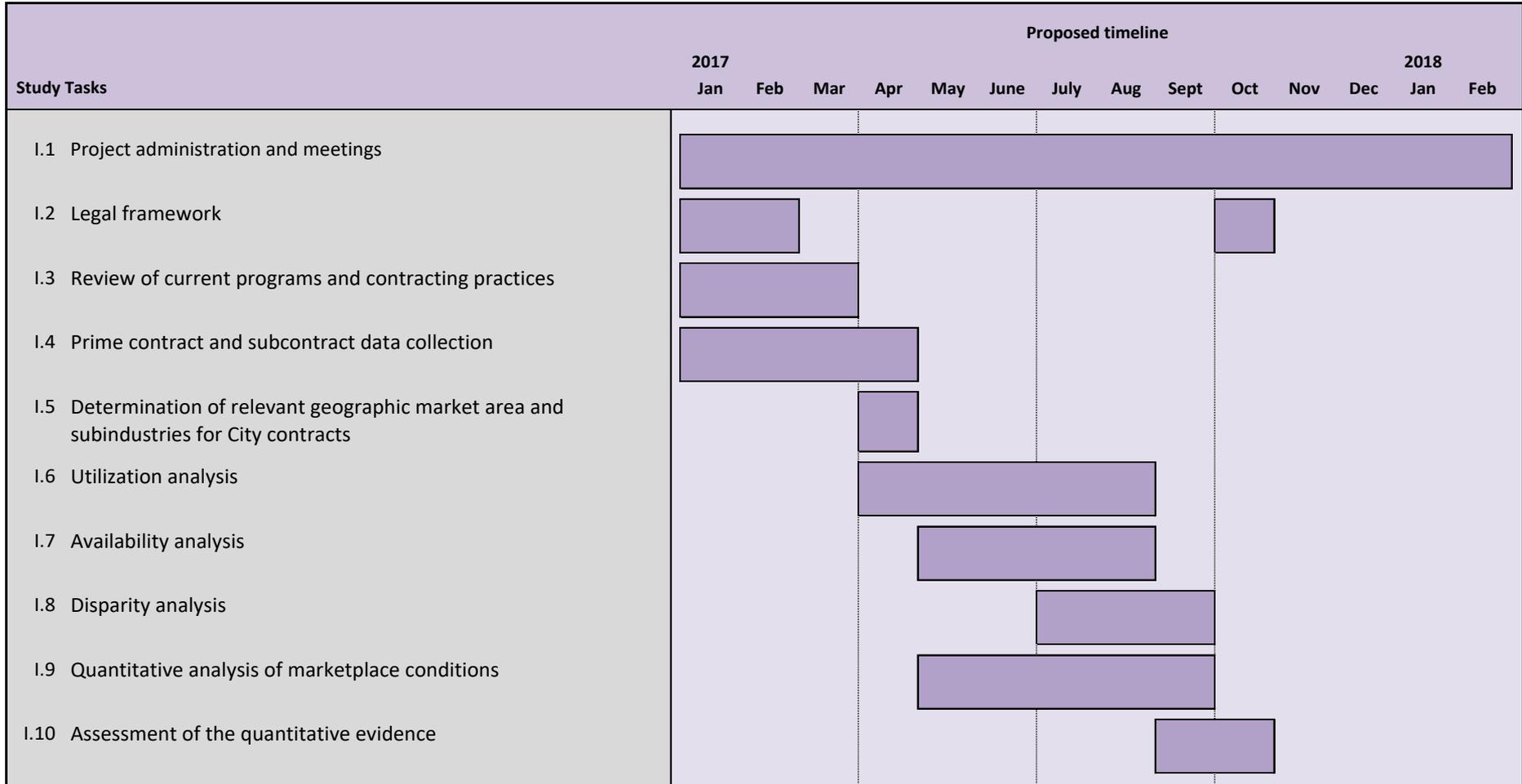
Study tasks



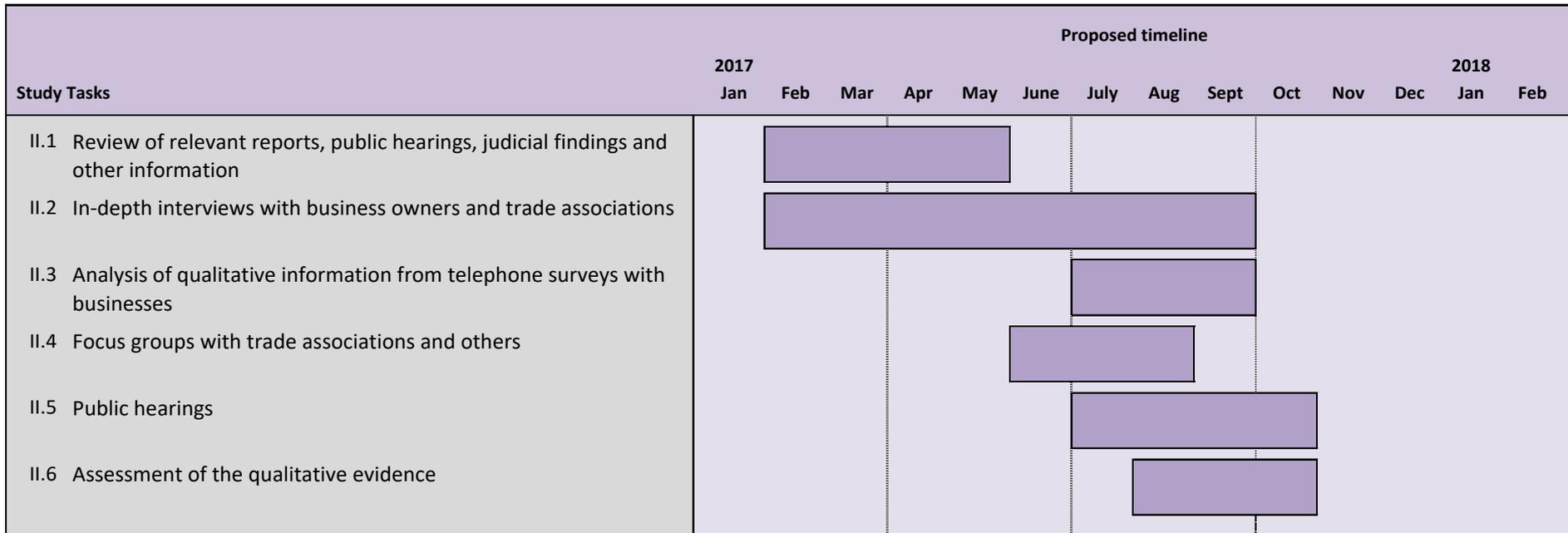
Example outline of a draft report

- Title Page
- Table of Contents
- Summary
- Chapter 1. Introduction
- Chapter 2. Legal Framework
- Chapter 3. City of New Orleans Contracts
- Chapter 4. Marketplace Conditions
- Chapter 5. Availability Analysis
- Chapter 6. Utilization Analysis
- Chapter 7. Disparity Analysis
- Chapter 8. Further Exploration of any Disparities
- Chapter 9. Summary of Evidence
- Chapter 10. Recommendations
- Appendix A. Definition of Terms
- Appendix B. Legal Framework and Analysis
- Appendix C. Contract Data Collection and Analysis
- Appendix D. General Approach to Availability Analysis
- Appendix E. Entry and Advancement
- Appendix F. Business Ownership
- Appendix G. Access to Capital for Business Formation and Success
- Appendix H. Success of Businesses
- Appendix I. Description of Other Data Sources
- Appendix J. Analysis of Qualitative Information

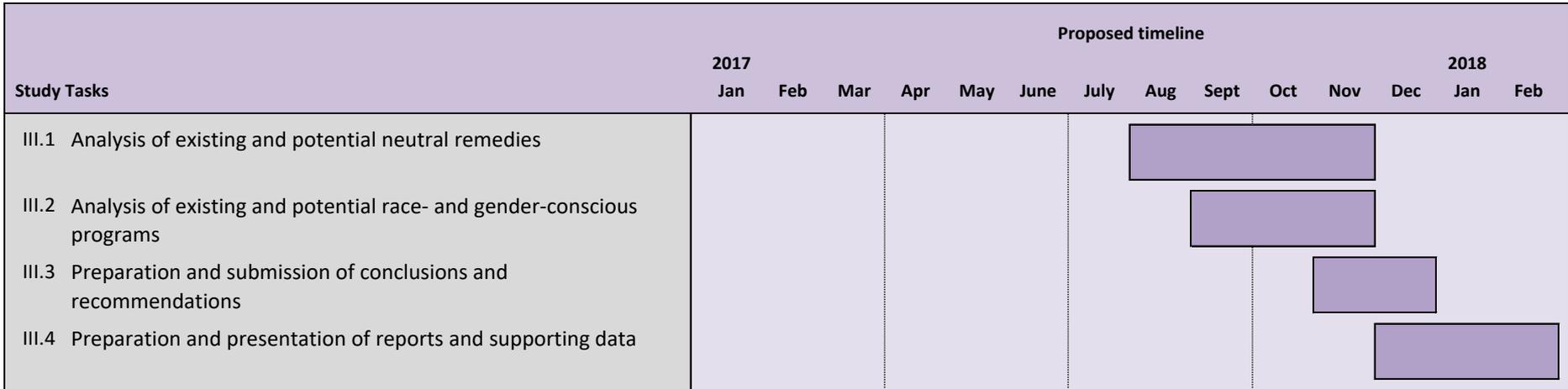
Task I - Disparity Analysis



Task II – Anecdotal Evidence Summary



Task III - Remedies



In next eight weeks, Keen Independent team will ...

- Hold first IWG and Oversight Committee meetings
- Meet with City staff to discuss contract/payment data and processes, and building permit data
- Review any sample contract data provided
- Prepare a contract data collection plan
- Begin compiling City contract data
- Fine-tune communications and QA/QC plans
- Collect and review materials concerning contracting practices and programs
- Compile and review reports and other information for local marketplace
- Develop list of trade associations and other groups that might be interviewed
- Develop website, email address, hotline and communications materials
- Prepare draft legal framework and analysis
- Prepare regular progress reports

How will interact with external groups

- Outreach through website, email address, hotline, press release and other means
- Public meetings
- 60 in-depth personal interviews with business owners and managers, industry group representatives and others, and City elected officials and other staff
- Collection of anecdotal information through focus groups
- Opportunities for any interested individuals or groups to submit comments