

Page #	RCW Citation	Recommendation	Notes	Offerer/Supporter	Comments
4	RCW 39.10.220 - Board - Membership - Vacancies	In subsection (2)(a): It may be worthwhile to have one of the 2 representatives from private industry be specific to MWBEs or in the additive to this list	This is in consideration of the full list included in the subsection. The representative from "the office of minority and women's business enterprises" is a person from the office that, while providing a useful perspective, is not the same as a MWBE owner. Another option that could be done separately or in conjunction would be to have a subsection at the end of this that encourages the governor to appoint membership that are MWBEs.	OMWBE	
4	RCW 39.10.220 - Board - Membership - Vacancies	Add a subsection (h) to the end of subsection (2) to add one member representing the small and diverse business community, selected by the National Assoc. of Minority Contractors, Washington Chapter		Aleanna	
5	RCW 39.10.220 - Board - Membership - Vacancies	Change subsection (11) to read: "The board shall encourage participation from persons and entities not represented on the board <u>including opportunities to gain insights from minority-, women-, and veteran-owned small businesses so decisions made and policies recommended by the board reduce barriers to participation in public contracting.</u> "	This change, or something similar, could also be an option for an area to consider more direction for involvement of MWBEs. The more information and guidance provided in the statute, the more likely folks will follow it and the more effective it can be.	OMWBE	
6	RCW 39.10.230 - Board - Powers and duties	There could be some statement in this section that speaks to the duty of the Board to ensure that the policies recommended to the legislature also consider impacts to equity in contracting for capital projects and reduce barriers to participations by MWBEs.	People will likely ask how this will be accomplished. Many times, barriers for underrepresented groups are not easily identifiable without seeking input and may be unintentional. Ensuring involvement and including considerations for potential impacts or ways to improve equity in contracting as part of the policy development/ assessment process will help in the overall effort to reduce barriers to equity in contracting. Without ever asking the question, it's difficult to identify those barriers in the first place and be able to do something about them. Including this as a consideration will help those conversations occur.	OMWBE	
7	RCW 39.10.240 - Project review committee - Creation - Members	Add the undelined language to subsection (2) as follows: "The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures <u>and/or represent various functions of capital project delivery; together with a representative from the diverse business community.</u> "		Aleanna	
7	RCW 39.10.240 - Project review committee - Creation - Members	Add the underlined language to the second sentence in subsection (2): "Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220 <u>and must include at least one member representing the interests of minority and women owned business enterprises.</u> "	This addition is especially important due to the following statute on the next page relating to duties and subcontractors. Given that subcontracting tends to have large impacts on participation of MWBEs, this seems appropriate here. Having MWBE perspectives on the panels/committees will be important to check assumptions and ensure learning opportunities are seized on.		

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7	RCW 39.10.240 - Project review committee - Creation - Members	The same language as the above recommendation can be potentially added to subsection (3) regarding the chair's appointment of members to the committee where it references "balanced representation of the private and public sector representatives serving on the committee	See above recommendations and notes	OMWBE	
10	RCW 39.10.270 - Project review committee - Certification of public bodies	Add " <u>Demonstration of successful management must include past performance of inclusion of diverse businesses.</u> " to the end of subsection (2)	PRC by-laws should enumerate examples of demonstration such as an owner would do with selection criteria.	Aleanna	
10	RCW 39.10.270 - Project review committee - Certification of public bodies	Subsection (2)(b) seems like a good area to add something to the list of experience and qualifications that addresses inclusion practices and other considerations that promote equitable contracting opportunities. This could also be something appropriate for including under (3)(a) if we wanted to add some language there about experience/ qualifications that demonstrate they are promoting equitable processes.		OMWBE	
10	RCW 39.10.270 - Project review committee - Certification of public bodies	Add the following to the list of experience and qualifications in (2)(b): "the ability to demonstrate internal controls and adopted best practices in the inclusion of diverse businesses to the maximum extent possible on public works projects"	Public owners and their project delivery teams should have standard practices that include scoring and enforcement of proposed inclusion approach.	Aleanna	
10	RCW 39.10.270 - Project review committee - Certification of public bodies	Add to the end of subsection (5): "were mis-represented, misused, or willfully violated"	Accountability consideration - This speaks to the "stories" we have heard about projects not going as described in applications or in owners description of delivery approaches.	Aleanna	OMWBE: This is an interesting idea – does it belong here though? Maybe I am missing something, but I thought this subsection was about revoking the public body's certification due to its use of design-build or general contractor/construction manager contracting procedures. Adding in these factors at the end seem more targeted at the prime/GC/CM. Applying these to a public body may end up being too broad or difficult to prove.

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11	RCW 39.10.270 - Project review committee - Certification of public bodies	(6) The committee may renew the certification of a public body for additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The committee may accept late applications, if administratively feasible, to avoid expiration of certification on a case-by-case basis. The application shall include updated information on the public body's experience and current staffing, <u>along with diverse business inclusion approach</u> , with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.	Public Owners should have an internal standard for inclusion, either using the OMWBE community of practice guide or adopted their own. For UW our approach is reviewed and "tweaked" constantly.	Aleanna	
12	RCW 39.10.280 - Project review committee - Project approval process	(1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, the public body's intended use of alternative contracting procedures, <u>description of the public body's diversity policies to be used that also address diverse business inclusion process;</u> and, if applicable, a declaration that the public body has elected to procure the project as a heavy civil construction project.	Each application should at least list a public bodies standard approach to diverse business inclusion or acknowledge the OMWBE community of practice, or similar.	Aleanna	
12	RCW 39.10.280 - Project review committee - Project approval process	Subsection (2)(a) could also be a wa to create better competition environments for MWBEs	No changes necessarily, but using current language to engage in additional efforts	OMWBE	
12	RCW 39.10.280 - Project review committee - Project approval process	Adjust (2)(c) consistent with the changes recommended on page 10 regarding experience and qualifications	Similar requiremetns should be adjusted in the same way.	OMWBE	
14	RCW 39.10.300 - Design-build procedure - Uses	Comments on new subsection (6) and some changes - the proposed changes were adjusted slightly in the draft, appears by Aleanna (?).	Aleanna asked: What about "certified public bodies?" There are a few other notes regarding certified public bodies in DB and that they shold provide reports to the Board in the recertification process	Aleanna and OMWBE	Combination of things. OMWBE's comments were on the draft prior to Aleanna's suggested changes. Probably easiest to look at the document in this case.
15	RCW 39.10.320 - Dwsign-build procedure - Project management and contracting requirements	(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, <u>diverse business inclusion</u> , or other goals if such payments are identified in the request for proposals.		Aleanna	OMWBE: We thought about this as well but it may not be possible under the current statutory restrictions. It would be good to seek AAG advice here.

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16	RCW 39.10.330 - Design-build contract award process	(1)(d)(ii): (ii) Evaluation factors for finalists' proposals shall include the management plan to meet time and budget requirements and one or more price-related factors. Evaluation factors may also include, but not be limited to the technical approach, design concept and the outreach plan approach to include small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project;	The concept of "outreach" is antiquated and denotes a low-level of effort. An approach can include both outreach methods and more robust inclusion strategies.	Aleanna	OMWBE: Would this confuse folks though? Agree outreach isn't everything but is important and we worry that folks may not understand what "approach
17	RCW 39.10.330 - Design-build contract award process	Add in subsection (4): "(c) Submission of an inclusion plan and proposed approach to utilization of diverse businesses."	Past performance should indicate where there might be success in the future, a proposal around a strategy to inclusion will demonstrate that experience.	Aleanna	
20	RCW 39.10.350 - General contractor/construction manager procedure - Project management and contracting requirements	Add under subsection (1): "(j) Contract documents that require the contractor to submit plans for inclusion of underutilized firms as subcontractors and suppliers including, but not limited to, the office of minority and women's business enterprises certified businesses, veteran certified businesses, and small businesses as allowed by law."		Aleanna	OMWBE: We may want to say "to the extent allowed by law" here as there will be some limitations on strict requirements for things due to the current statutory framework. It may be good to seek AAG advice here.
20	RCW 39.10.350 - General contractor/construction manager procedure - Project management and contracting requirements	(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, inclusion of diverse businesses or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.		Aleanna	OMWBE: Depending on what this entails, there may need to be some caution here with the recommendation of the added language due to current legal restrictions.
22	RCW 39.10.360 General contractor/construction manager procedure - Contract aware process	Under Subsection (2), insert a new subsection (c) and renumber: "(c) The public agency's diverse business inclusion goals."	DB	Aleanna	
23	RCW 39.10.360 General contractor/construction manager procedure - Contract aware process	Under Subsection (3), add a new subsection for evaluation factors for qualifications as follows: "(vi) The proposer's past performance in utilization of the office of minority and women's business enterprises certified businesses, to the extent permitted by law."	Similar to DB and HB 1259	Aleanna	OMWBE: We have heard a desire for this as well. This is information that we believe we would have access to through B2GNow software, which we are also working to implement on a statewide level, as recommended by the 2019 Disparity Study, but only at the state level, not for political subdivisions.
23	RCW 39.10.360 General contractor/construction manager procedure - Contract aware process	Under Subsection (3), change "outreach plan" to "approach"	please see earlier comment on outreach plans.	Aleanna	OMWBE: See earlier comment on the same suggestion.

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23	RCW 39.10.380 General contractor/construction manager procedure - Subcontracts bidding procedure	Requirement for publication in a legal newspaper of general circulation - add to this? See Notes in next cell	It is a little outdated to only include this. We understand this is a standard legal requirement, but it would be worthwhile to consider that there at least be an encouragement, if not a requirement, in addition to the newspaper to publicize this in a more modern, inclusive way that will actually solicit bids. There are folks that will only do the bare minimum to avoid having additional options because they want to use a particular subcontractor, thereby closing off opportunity to more diverse firms. And other publication options may even be low to no cost.	OMWBE	
23	RCW 39.10.380 General contractor/construction manager procedure - Subcontracts bidding procedure	Consider adding at the end of the second to last sentence of the new language proposed in sub (1): "and to reduce barriers to small and minority and women owned business participation." Or something to that effect.	The more we state that these things are important, the more these practices will be normalized and (hopefully) improve equitable opportunity.	OMWBE	
23	RCW 39.10.380 General contractor/construction manager procedure - Subcontracts bidding procedure	New sentence on bundling/unbundling at end of sub (1)		Aleanna and OMWBE	Both agree this is a great practice and are glad to see it here. It follows the general principles of unbundling which is beneficial to small biz and MWBEs
23	RCW 39.10.380 General contractor/construction manager procedure - Subcontracts bidding procedure	(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents <u>and may include supplemental bidder responsibility criteria such as described in RCW 39.04.350</u> . Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.	On large bid packages (e.g. \$1M responsible bidders should be able to contribute to the inclusion aspirational goal for the project. This allows hard bids to include an inclusions plan, etc.) This is consistent with OMWBE community of practice.	Aleanna	OMWBE: We are looking to roll out those best practices soon and recommend that inclusion plans be incorporated in all bid submittals. Thank you for the plug here!
28	RCW 39.10.385 - General contractor/construction manager procedure - Alternative subcontractor selection process	Regarding the addition: "It may also be used by noncertified public bodies if this selection e process has been approved for the project by the project review committee." - this should eb cross referenced int eh project specific application needs.		Aleanna	

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28	RCW 39.10.385 - General contractor/construction manager procedure - Alternative subcontractor selection process	Publication in legal newspaper requirements and other notice requirements in (1)(a)	Same comments are previous on the newspaper/publication topic. Outreach is also important and a component of the overall effort. The OMWBE certified	OMWBE	
28	RCW 39.10.385 - General contractor/construction manager procedure - Alternative subcontractor selection process	Add in (1)(a) to the list of the items interested parties may obtain prior to the meeting: "(ii) the agreed project diverse business inclusion aspirational goals"	On alternative selection process same/or similar selection criteria should be there and it should be published /incorporated into the process	Aleanna	
29	RCW 39.10.385 - General contractor/construction manager procedure - Alternative subcontractor selection process	Adjsut (3)(e) to read: (e) The firm's plan for outreach <u>approach to including minority and women-owned businesses including aspirational inclusion goals for their scope of the work;</u>	See earlier comments on outreach plans	Aleanna	OMWBE: Recommend AAG review of this proposed language change. I see where you are going with this and agree that just outreach is pretty flat, but want to be sure that we're not creating risk or whether we need to word this in a different way.
30	RCW 39.10.385 - General contractor/construction manager procedure - Alternative subcontractor selection process	Subsection (7) where "most qualified firm" is changed to "lower scored firm," this language may not be a good change	Clarification consideration: This language is confusing, suggest revising and not use terms of art. I am assuming we are still talking about a firm that has standing (participated in the selection process) but was not the highest ranked/scored??	Aleanna	
33	RCW 39.10.400 - General contractor/construction manager procedure —Prebid determination of subcontractor eligibility.	leagl newspaper publication requirements	See previous comments on these requirements. Newspapers are GREAT generally, but not the only options and can be treated as the care minimum to exclude subcontractors	OMWBE	
36	RCW 39.10-430 - Job order procedure - Contract award process	Delete "make an effort to" language in sub (2)	A solicitation is simply an ask/request. "Making an effort" is trite.	Aleanna	
36	RCW 39.10-430 - Job order procedure - Contract award process	(2) The public body shall make an effort to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400. <u>The public body is encouraged to use the directory of certified firms maintained by the office of minority and women's business enterprises to do outreach to raise awareness of the bidding opportunity.</u>	Proposed potential language here. Take or leave	OMWBE	
36	RCW 39.10-430 - Job order procedure - Contract award process	Insert a new subsection (c) as follows and renumber accordingly: "The public agency's aspirational inclusion goal for the contract;"	Same as in the other delivery methods, the Owner should state their inclusion goals, it may be general, by project, by contract, or similar.	Aleanna	OMWBE: We have heard similar requests and are supportive so long as we can include it under the current legal framework.
36	RCW 39.10-430 - Job order procedure - Contract award process	In subsection (3)(f) (renumbered as (g)): after "past performance on approved subcontractor inclusion plans" include: <u>"and their approach to diverse business inclusion if awarded"</u>	Encourage owners not just to consider past performance but also include an approach that will be used if awarded this work.	Aleanna	

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38	RCW 39.10.4410 - Job order procedure - Contract requirements	The language currently at end of sub (4): "...and shall limit subcontractor bonding requirements to the greatest extent possible."	Most JOCs in the State report that they do not require bonding for any subcontractor on JOC work orders.	Aleanna	
38	RCW 39.10.4410 - Job order procedure - Contract requirements	(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year, <u>that includes the agreed contract aspirational inclusion goal(s) and current annual inclusion performance</u> , in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.	Since JOC is required to keep public up to date why not make current inclusion numbers public.	Aleanna	OMWBE: Same comments as before on publication
40	RCW 39.10.450 - Job order procedure - Work orders	Change sub (5) to read as follows: "A public body may issue no work orders under a job order contract until it has <u>agreed to</u> , in consultation with the office of minority and women's business enterprises or the equivalent local agency, a <u>contract inclusion plan</u> prepared, by the job order contractor, that <u>details subcontracting inclusion processes and work assignments which equitably distributes</u> certified women and minority business enterprise subcontracting opportunities, among the various subcontract packages, to the extent permitted by the Washington state civil rights act, RCW 49.60.400 .	Public owners should have accepted and agreed to a contract inclusion plan. It is best practice for JOCs to discuss how they will assign work through work orders or how they will solicit bids in an inclusive manner. Does I-200 apply in the strict sense of general award to the JOC? Meaning, often in DB there is a work assignment process that awards based on other value factors such as cost savings to the project, availability, specialty, etc. So does 49.60.400 really apply to lower tier work assignments? And if so, in the same manner as a direct award by the public agency to a 3rd party. I believe many owners have received different opinions on this.	Aleanna	
41	RCW 39.10.460 - Job order procedure - Required information	In subsection (3): "A list of subcontractors hired under each work order, including whether those subcontractors were certified small minority, <u>women, or veteran owned businesses.</u> "	Language for consideration	OMWBE	
50	New Section - General contractor/construction manager - Heavy Civil Construction Projects	Suggest adding a new subsection (ii) under (1)(a): "The public body's diverse business inclusion goal" and renumbering the subsections to suit	Same as in other places, HC GC/CM solicitation should first include an owner's inclusion goals for the project.	Aleanna	OMWBE: This likely needs just a little more – recommend the language be adjusted to read: "Include how the public body's diverse business inclusion goals will be met;" or something to that effect.
51	New Section - General contractor/construction manager - Heavy Civil Construction Projects	in (1)(b)(iv): The general contractor/construction manager's updated outreach plan <u>approach</u> , including but not limited to outreach, to include small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;	See previous comments on outreach plans. Also, consider keeping consistent identification of diverse businesses throughout GC/CM statute	Aleanna	OMWBE: We understand the issue here in reviewing the previous comments on this, but might there be a risk that this could be unclear that it includes outreach without mentioning "outreach" or create confusion is we don't have a description of what "approach" means included in other areas of the bill similar to how you've proposed it here? Also, we agree about the consistency of references in this entire bill and chapter.