

**Small Works Committee**

Meeting Notes 10-07-2022

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**Members:** (16 members, 3 alternates 9 = quorum)

x	Dawn Egbert, Ports
	Bobby Forch Jr., Diverse Business
x	Bill Frare, DES – Owner State (Co-Chair)
x	Josh Klika, MRSC
	Erik Martin, Counties
x	Scott Middleton, MCAWW
	Karen Mooseker, School Districts
x	Rachel Murata, OMWBE

x	Brenda Nnambi, Transit
x	Irene Reyes, Private Industry\DBEs (Co-Chair)
x	Mark Riker, Labor
x	Cathy Robinson, Cities
x	Jolene Skinner, L&I
x	Kara Skinner, Insurance/Surety
x	Olivia Yang, Higher Education
	Corey Fedie, Hospitals

**Alternates:**

	Mark Nakagawara, Cities (alternate)
x	Angela Peterson, Ports (alternate)
	Julie Underwood, Cities (alternate)

**Guests:**

x	Travis Alley, ATG
x	Bob Armstead
x	Talia Baker, DES

x	Maja Huff, WSU
x	Clair Moerder, MFA
x	Michael Transue

**Meeting started at 2:35pm**

*Review/Discuss Draft Presentation for October CPARB Meeting*

**Discussion Highlights:**

Members expressed concern over the presentation being considered final before it has been vetted properly with their stakeholder groups. Components included in the presentation have not been approved yet by all members. Given the time pressure to present the draft to CPARB for consideration and discussion at the October meeting, members were asked to remain neutral on components they had not yet had a chance to vet with their stakeholders.

Members worked together to reword #3 on the **Intent slide** – simplifying to “protect the rights of workers.”

When discussing the **Developing and Maintaining Rosters slide**, members discussed whether maintaining multiple rosters, rather than consolidating to one statewide roster, would perpetuate the barriers they are hoping to address by limiting eligibility for a statewide roster to small, minority, women & veteran owned businesses.

- An exact definition of small business is under development by the Legislative Writing & Drafting Committee.
- In the context of having a single statewide roster and moving away from multiple rosters (some maintained individually by contracting agencies), members expressed concern that finding enough eligible contractors in small, remote counties or in certain industries (i.e., ports) would be extremely difficult. This could lead to pushback if the proposal is to eliminate contracting agencies’ individually maintained rosters.

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The suggestion of implementing a phased approach to removing contracting agencies' rosters and transitioning to a single statewide roster was supported by multiple members. The point was made that it also gives more time to better understand and populate the roster with contractors currently on other rosters and to recruit more small and diverse businesses onto the new statewide roster.

Members discussed how a single statewide roster should work to support equity.

- There was agreement that contractors should not have to pay a fee to bid on multiple agencies' projects.
- There was discussion that contractors should be able to register for access to all bids within a county/region and not be limited by a certain number of subcategories or contracting agencies.
  - The two components listed above could be programmed into the roster's IT system.
- Another potential eligibility component which could be programmed in would be a regular check with L&I to ensure those contractors do not have a record of wage/safety violations, etc. Although this check is also done prior to awarding any contract and by most surety companies, the concern came from the idea that the small works roster will streamline contracting procedures, and checks and balances must be preserved.

Currently, around 80% of contracting agencies in WA state use the Municipal Research and Services Center (MRSC)'s existing statewide roster, so it was proposed that MRSC also maintain the new statewide roster that is limited to small, minority, women, and veteran owned businesses. Because the MRSC statewide roster is a standalone program not funded by grants, to recoup costs for maintaining the roster, MRSC currently charges a fee for access to bids for more than nine contracting agencies. This has been flagged as a barrier for participation, so the idea of securing additional grant funding for the roster was also discussed.

When discussing the **Contracts under \$1,000,000 slide**, it was emphasized that the simplified bidding process outlined is permissive, not a requirement. Cost alone is not an indicator of the risk or complexity of a project, so it is up to the owner to exercise good judgement in whether to use the simplified bidding process. Specific language to fine-tune this idea is under development in the Legislative Writing & Drafting committee.

- Concerns were voiced that whether intentionally or not, contractors are more likely to low-bid projects without complete plans & specs (which are not currently defined in the RCW), which leads to delays, change orders, and cost overruns.

Members shared there are many different options for how to implement a simplified bidding process.

When discussing the **Contracts under \$350,000 slide**, members agreed that the proposed process to simply select a contractor off the small works roster and negotiate a price with them removes barriers and makes the roster a good incubator.

Members also discussed that not all agencies statewide use the \$350,000 threshold, using \$300,000 instead. Part of this proposal would be to standardize so that all contracting entities use the \$350,000 threshold.

Under #4 on this slide – “May waive retainage and assume liability,” it was also mentioned that not requiring bond or retainage over \$5,000 was a possibility.

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Under #5 on this slide – “Must publish results?” It was asked whether contracting agencies should be required to publish results (contractor, scope, price) on some sort of interval. No objections were voiced.

When discussing the **Contracts under \$150,000 slide**, under #5 on this slide, “may waive performance bond up to \$20,000,” it was mentioned that one of the intended outcomes of the overall proposal is to allow new contractors to develop a bonding & insurance history with the bond industry. To balance this with the goal of not pricing small or minority contractors out of a bid due to needing a bond, \$20,000 was proposed as the appropriate threshold for waiving the performance bond requirement. This number was proposed given that many surety companies do not offer performance bonds below \$20,000.

- Some entities have adopted a combination payment/performance bond (called a contract bond), and some surety companies also assume that “performance bonds” refer to payment/performance bonds. It was proposed to waive both if waiving one, to be consistent across agencies.
- In the small works statute, under the limited public works section, payment and performance bond can be waived for projects up to \$50,000, leaving the contracting agency responsible for liability.
- Other than the state, other entities are not allowed to negotiate on public works contracts, so agencies must put in their bid/contracting documents whether a payment and procurement bond makes sense.

Smaller, newer contractors would need to pay a larger percentage on a bond than a more established contractor would. This can cancel out the profit needed for a newer contractor to establish themselves and move on to the next project.

- Surety/bond companies look for experience as well as bond history. Because this proposal would allow for projects under \$150,000 to be a no-bid environment, the benefit would be that contracting agencies could negotiate directly with the contractor, allowing them to develop that experience and bond history, leading to a reduced bond fee in the future.

Concern was voiced by multiple members that raising the threshold for waiving the performance bond from \$5,000 to \$20,000 would not be acceptable to the Retainage and Bond committee.

- Discussion relayed from the Retainage and Bond committee was to not require retainage/bonds up to \$5,000. This is separate from the existing statute allowing the waiver for up to \$50,000. Waiving means that the public agency assumes the liability. Wording for #'s 4-5 may need to be reworked with this in mind.
- It was noted that using the word, “may” opens the door to discrimination. This would be better if it was written as more of a rule.

It was also asked whether this proposal would do away with the popular practice of waiving payment/performance bonds for projects under \$150,000 but holding 10% retainage in lieu of a bond. Multiple members supported this practice as it helps newer contractors get experience without having to qualify for a bond.

Concern was also voiced that minority owned businesses may not have favorable credit and would not be able to get bonds as a result. It was shared that helping a contractor develop experience and

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credit by providing resources, counseling and opportunities is an important way to address this barrier. Further discussion followed on increasing participation of minority owned businesses.

- Members discussed language that would promote the utilization of minority owned businesses, noting that “an agency’s small works spend on minority, women, or veteran owned businesses must match the demographic of the region” could in fact become a limiting statement, depending on the region. It was also noted that census data does not always reflect the rapid changes in demographics that sometimes occur within a region.
- An alternative wording was proposed: “spend must exceed the demographic of the small works roster,” although the word “exceed” caused some confusion. This was clarified to refer to percentage of minority, women, or veteran owned businesses on the roster.
  - It was suggested as a best practice for public owners to keep a record of who on the roster was invited, who responded, and who was awarded contracts. It was suggested to add “must publish bid tabulation” to #3 on this slide, “must publish results (contractor, scope, price).”

### Action items:

1. Olivia Yang will send a white paper on this presentation to Mark Riker ASAP for vetting with the Labor stakeholder group.

**Meeting adjourned at 4:00 p.m.**

**References\Resources:** Co-Chair Frare’s Draft PowerPoint presentation for CPARB on 10/13.