

Small Works Committee

Meeting Notes 5/13/2022

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Members: (13 members, 3 alternates 7 = quorum)

X	Dawn Egbert, Ports
	Bobby Forch Jr., Diverse Business
X	Bill Frare, DES – Owner State
X	Josh Klika, MRSC
X	Erik Martin, Counties
X	Karen Mooseker, School Districts
X	Rachel Murata, OMWBE
X	Mark Nakagawara, Cities (alternate)

X	Angela Peterson, Ports (alternate)
X	Irene Reyes, Private Industry\DBEs
X	Mark Riker, Labor
X	Cathy Robinson, Cities
X	Jolene Skinner, L&I
X	Kara Skinner, Insurance/Surety
	Julie Underwood, Cities (alternate)
X	Olivia Yang, Higher Education

Guests:

	Talia Baker, DES
	Maggie Dalzell, MRSC
	Mallorie Davies, SCL WA & ID
	Sen Bob Hasegawa
	Maja Huff, WSU

	Brenda Nnambi, Sound Transit
	Jon Rose, MRSC
	Leeann Snyder, King Co Procurement
	John Starbard, City of Kirkland
	Janice Zahn, Ports & CPARB Chair

Meeting started at 1:32 pm

Co-Chair Bill Frare started the meeting with an overview on how DES uses Small Works.

Small Works originated as an administratively efficient way to get projects out on the street. Some projects don't need full plans and specs, advertisements, or invitations to bid. Contractors on the Small Works Roster are ready to go, and it's good for local contractor development, etc. There is a need to develop the minority business, new small businesses, women- and veteran- owned businesses. The Job Order Contracting process doesn't provide them opportunities to get experiences as a GC, develop a history with bonding, insurance, cash flow, or operating as a prime contractor.

Chair Frare would like the Committee to rewrite the statute to clarify how to develop a Small Works Roster, what's the process for Limited Public Work, what's the process for Small Works, and how to direct that work and provide the opportunity for small businesses to grow.

He would like the ultimate deliverable for the Committee be to provide a rescripted statute that works well for public agencies and the public contractors who will use it.

Chair Frare asked attendees to introduce themselves and share their interest\goals for this committee.

- Streamline the statute (*easier to read and more efficient process across all agencies*)
- Clarify contracting language
- Protect the workers from exploitation
- Enhance business and worker opportunity
- Make sure Ports are included
- Ensure there is some consistency across the state for large\small counties, large\small cities, large\small DEI contractors.
- Transparency and accountability to foster trust

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Committee development will continue to evolve because there is a need for more representation from small\diverse businesses who are directly affected by changes in statute. Their involvement will ensure their voices and perspectives are heard. Additionally Scott Middleton, representing the Mechanical Contractors Association, has also shared an interest to be included.

Since this Committee hopes to impact policy, it would be a good idea to reach out to WACC and AWC for Policy reps to join the Committee meetings. Erick Martin will reach out to WACC, and Mark Nakagawara will reach out to AWC.

Olivia provided some perspective on the crossover between the Small Works Committee and the Business Equity/Diverse Business Inclusion (BE/DBI) Committee in regard to increasing utilization of small and diverse businesses. The BE/DBI Committee has done a lot of research and stakeholder outreach to develop a report for the legislature which is in its final draft stage. Part of the report talks about access to procurement opportunities, and there is recognition that Small Works offers opportunities for diverse firms and acknowledges that to make the procurement successful there needs to be ways to make the businesses successful (cashflow, training, jobs availability, etc.). CPARB established a legislative writing\drafting committee to help with drafting legislative proposals and they will work closely with all of the Board's committees when they are ready to draft proposed legislation.

As a starting point, Chair Frare shared his proposed scope of work with the group so the committee can start to compartmentalize and develop a plan.

The committee worked together to take the original scope and grouped like topics.

Discussion Highlights:

The user's perspective could be different than the contractors' perspective.

Does the Committee want to define Small Business? The national definition is too broad. Currently the small business definition does not prohibit a company from being on the Small Works Roster.

- Will there be a limit to smaller business to allow competition between like firms?
- Different agencies categorize small business differently. It would be good to standardize the definition across the board.
- The industry needs consistency across the board, so comparing the different definitions will help efficiency.
- When drafting a definition caution is advised regarding the broader interpretation & unintended consequences of the definition
- Delay defining Small Business until it's time to discuss qualifications

Olivia noted that the definition of small business could be defined by someone on another committee. From a diverse business perspective there is a range of small businesses: Mico vs. Mini vs. Small businesses with different needs [[RCW 39.26.010](#)]. Whatever definition is used, we will need to

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consider if we want to further define that for the SWR so the proper business service support can be available for those businesses.

It's important to remember that not all small businesses are at the same level of experience and capacity.

CPARB Chair Zahn pointed out that the Legislative House Local Government Committee – asked that CPARB take a look at small works as an opportunity to both reform the RCW to meet the original intent and determine if it is potentially a pool to help small Minority-, Women-, Veteran-owned businesses to gain access into Public Works construction projects. CPARB formed the Small Works Committee to take on that task.

If the committee elects to break up into groups, it might be helpful to take a look at the original intent of the statute regarding equitable distribution and a process for small works, and then a second group could take on the pipeline issues for access of the mini\micro\small businesses to get into PW Projects. And then both groups come together to identify how those issues intersect.

There is a risk discussion here too. Small businesses have more risk. At some point we will need to define who the process is for if we want to place limits.

The List of Policy Topics to Address

1. Retainage and Bonding:

Retainage ensures that workers, taxes, liens and other fees are paid by the contractor in accordance with state law. A performance bond guarantees that the work will be completed for the price that was bid in the event a contractor is unable to do so. Both are established risk mitigation measures that have been in practice for decades.

The State has received feedback that these measures disproportionately affect small and minority businesses, though higher fees, and cash flow.

Are there other ways to mitigate these risks on smaller contracts?

2. Equitable Distribution

The State has received feedback that the same contractors are receiving small works contracts. What policy provisions can we make within a low bid environment, that will promote equitable distribution of these contracts? Some ideas to consider are:

- a. Removing successful contractors from future invitations to bid
- b. Ensuring competition between like contractors, MBE, WBE, VBE, SBE...

3. Developing and maintaining Rosters

- a. Qualifications to get on and stay on a roster
- b. Definition of Small Business
- c. What about definitions for Minority, Women, and Veteran-Owned Businesses?
Certified or Self-identified.
- d. Should be consistent across the statute

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e. Concern about broader interpretation and unintended consequences.

4. Thresholds; Small Works (most \$350,000- Ports & irrigation Districts \$300K)
 Limited Public Works (\$50,000),
 No-Bid (Some contracting agencies \$75,000)

Discussion on uniform bid limits for each of these categories. A way of enacting this concept is to link poly-sub enabling statutes to the small works statute to ensure consistent and uniform application of small works requirements across all public contracting agencies

5. Automatic Cost Escalation, How often and by what measure?
6. Two-Tier system for contracting agencies

The State has received feedback that thresholds should be adjusted for a contracting agencies size and level of expertise or sophistication. The idea presented was a two-tier system that had higher limits for contracting agencies with large capital programs and smaller limits for contracting agencies who had less experience. Does this idea have merit?

7. Administratively Transparent and Efficient
 - a. Prompt Payment
 - b. Standard Contract Templates
 - c. Publication in a legal newspaper
 - d. Notice to contractors not invited to bid

Action items:

1. Develop a timeline and schedule to see if the Committee can meet the requirements for the next legislative session.
2. Erick Martin will check in with WACC to see if they have a Policy Writer interesting in participating on the Small Works Committee
3. Mark Nakagawara will check in with AWC to see if they have a Policy Writer interesting in participating on the Small Works Committee

Reference RCWs:

[Definitions for 39.04.010](#)

[RCW 39.04.155: Small works roster contract procedures—Limited public works process—Definitions. \(wa.gov\)](#)

[RCW 39.04.156: Small works roster manual—Notification to local governments. \(wa.gov\)](#)

Meeting Adjourned at 3:02 pm