

Small Works Committee

Meeting Notes 7/8/2022

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Members: (14 members, 3 alternates 8 = quorum)

x	Dawn Egbert, Ports
	Bobby Forch Jr., Diverse Business
x	Bill Frare, DES – Owner State
x	Josh Klika, MRSC
	Erik Martin, Counties
x	Karen Mooseker, School Districts
x	Rachel Murata, OMWBE

E	Brenda Nnambi, Transit
	Irene Reyes, Private Industry\DBEs
	Mark Riker, Trades/Labor
	Cathy Robinson, Cities
x	Jolene Skinner, L & I
	Kara Skinner, Insurance/Surety
x	Olivia Yang, Higher Education

Alternates:

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

x Erin Frasier (Trades/Labor)

Guests:

x	Talia Baker, DES
x	Maja Huff, WSU
x	Melissa Van Gorkom
x	Scott Middleton
x	William Ward,

x	Cindy Magruder, UW
x	Beck Eatch, WSU
x	Janice Zahn, CPARB Chair
x	Leeann Snyder

Meeting started at 1:35 pm

Chair Bill took roll to establish a quorum.

Workgroup Reports

1. *Retainage and Bonding:* Jolene Skinner is the lead and reported the workgroup has had 2 meetings so far. The big question is why Retainage & Bonding is a barrier, and they discussed possible remedies.

Chair Frare is concerned that Agencies are describing only what they perceive as barriers, but feedback from small and diverse businesses would be ideal to confirm if any or all are accurate.

In the MRSC [Local Government Public Works Contracting Report \(2021\)](#) there was discussion regarding some of the barriers with M/WBE representatives. Many of the barriers discussed in this workgroup were the same identified in that report. Some of those include:

- Long waiting times for retainage release.
- Cost for surety is higher until the business is established.
- Paperwork for bonding is lengthy.
- Capacity of the bond for additional projects can be limited.

Having Retainage or a bond in place is a necessity as a protection for workers, contractors, taxes and public owners. When retainage or a bond is not in place, it is very difficult and expensive to recover unpaid wages, taxes, etc. The awarding agency is still liable if they choose to wave the retainage or bonds. This passes the liability payments back to the public to pay for losses which is not a fiscally responsible way to manage public funded projects. Labor & Industries does not take this lightly.

There is interest in identifying alternative remedies.

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Dawn noted that when the Port receives federal funding they are required to reserve retainage. She is curious what other states are doing? Many other states are NOT allowing waivers to retainage or bonds.

For partially federally funded transportation projects that rely heavily on the bonds, public owners are required to pull retainage out completely and the protection relies heavily on the bonds.

Mr. Middleton asked if one of the problems regarding retainage and bonding for M/WBE businesses is cash flow? Yes, many small & minority businesses are waiting for the release of the retainage or bonds because they don't have the cash flow resources to move to the next project without it. Unfortunately, the retainage release problem lies with the Department of Revenue.

2. *Equitable Distribution*: Rachel Murata is the lead and reported that the workgroup has only met once so far. They agreed on a set of principals to help focus on priorities.
 - a. Any change should result in a system that is sustainable and flexible to make sure it works for public owners of varying sizes.
 - b. It needs to be administratively workable for all involved.
 - c. The system needs to be transparent to build trust and encourage businesses to bid and allow them to see the results of those bids.
 - d. It should be administratively simple to reduce the burden on public owner employees and businesses together.
 - e. To increase transparency, one option would be to require public owners to publish their reported contracts regularly whether that's monthly or quarterly.
 - f. Possibly adding intent language to the statute specifying that the intent is to provide fair, open and transparent opportunities for all. This with the understanding that sometimes public owners may have circumstances where a direct contract is administratively beneficial.
 - g. Specify that for Public Works projects under \$50K, direct contracting should be an option at the public owner's discretion.
 - h. Generally discussed potential language to require that entities have procedures for equitable distribution that doesn't favor some businesses over others that are willing to perform the same work.

Chair Frare stated the general rule for Limited Public Works (LPW) is to contact 3 contractors and for Small Works (SW) the rule is to contact 5. Has there been any discussion about modifying that practice or requiring agencies to contact everyone on the list? The workgroup did talk about it a little bit but chose to focus on intent priorities to offer fair and equitable opportunities for everyone.

The current thresholds are:

- No bonds are required =under \$35K
- Limited Public Works = \$50K;
- Smallworks = \$350K for most entities

This workgroup is primarily responsible to analyze and explore the language of the statute although much of the discussion overlaps with the work from the Threshold workgroup. There has been suspicion that some businesses pick the same 3 or 5 contractors over and over, and we want to make sure that all contractors on that list or roster for each discipline get an opportunity to bid while still making it an administratively fluid process for the contracting agency.

3. *Developing and Maintaining Rosters*: – Josh Klicka shared his [workgroup report](#).

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Tasks for the group were identified as the qualifications to get on and stay on the rosters, and the definition of *Small Business*. Out of those two tasks the group elected to focus on the Qualifications piece because the Legislative Writing/Drafting Committee is currently analyzing this definition for consistency across all relevant RCWs.

The workgroup identified three categories to focus on for developing and maintaining rosters and topics to explore for each.

- a. Look at the potential of centralized roster
 - a) Application Requirements
 - b) Centralized entrance point
 - c) Existing options
 - d) Funding source
- b. Management of the roster
 - a) Structure to sign-up
 - Providers
 - Agency Customers
 - b) Responsible Agency
 - c) Implementation
 - d) Resources
- c. Issues
 - a) More than one roster?
 - b) Using existing option(s) as centralized roster?
 - c) Legislation regarding roster centralization?

There was an inquiry if the MRSC data was considered a central roster? The MRSC program is available for agencies to opt-in for use, but larger agencies typically form their own. Development of a centralized roster is worth a deeper discussion as that would support the work other workgroups are doing.

Ms. Reyes asked if anyone knows how many public owners use MRSC? And how many do not? It would be good to consider those who don't want to use MRSC and prefer there was just one location for the whole state. That point did come up during the workgroup's discussions. Identifying where that list would exist is still up in the air. More research still needs to be done. About 75% of all local government entities are currently on the MRSC roster.

Maybe the use of WEBS or OMWBE are possible considerations as well.

Regarding the idea of having a single roster, a decision would need to be made if it's required or general practice. It may be better if it's not dictated in statute. Having just one roster could make it easier for small business because it's just one application. Over all we will need to be cautious about the potential for the perception of conflict of interest.

There was agreement that a single application would be helpful for small and minority businesses. Not everyone has time or energy to maintain their own system to manage a SWR. Ease of use would be a good way to reduce barriers. There was agreement that agencies don't want to lose the option to maintain their own roster. The possibility of breaking the roster into regions did not come up in discussions yet. MRSC does break them down by location and allows for regional selections. As a counterpoint, there needs to be a distinction or ability to select availability of suppliers vs. laborers available for multiple locations. Perhaps it would be helpful to establish rules around sharing rosters.

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There is value to considering streamlining the process to getting small contractors onto the list(s).

Chair Frare asked if School Districts use MRSC or establish their own rosters. School Districts are similar to other agencies where some manage their own rosters, and some do not.

Chair Frare shared that he has concern about proximity or Region for a contracting agency vs. local businesses on the SWR.

Once contractors are in the SWR system, it would be good if there was a way for firms of a certain size to only compete with similar sized firms. This committee may want to consider what that might look like.

Overall, the questions are a) What can we do to ensure equitable distribution for all projects, and b) What are we doing to preclude that from happening?

4. *Thresholds\Cost Escalator\Two-Tier System* – Dawn Egbert reported that her workgroup has had 3 meetings with great discussions. The first 2 meetings discussed thresholds and what would be ideal. They looked at data from L&I on current numbers of projects for those ideal thresholds, and talked about the [Local Government Public Works Study Report](#).

Dawn shared her Threshold [comparison chart](#) and list of suggestions.

- Keep Limited PW <\$50K – Allow public owners to select without competition or request quotes at their discretion. (needs a written policy)
- Small Works \$50K-150K – Keep current process to request quotes from all or allow a short list.
- Small Works \$150K-350K – Invite quotes from all contractors from the roster pertaining to the category of work solicited for.

The workgroup will revisit the possibility of raising thresholds over \$350K after today's SWC meeting.

If the threshold is raised to \$400-500K, how can this be done equitably?

2-Tier Systems: There isn't any consensus yet. Which issue should they focus on to resolve? There is a suggestion that certain owners should be given higher thresholds than others. The 2-Tier system may be ideal to address different experience levels. Streamlining the process and updating the thresholds as suggested in Dawn's matrix may resolve many of the issues identified. Additional training, ownership and accountability will then need to be addressed.

Regarding Cost Escalation, there wasn't a specific number determined at a threshold. There needs to be more discussion to identify what that might look like.

Contractors would support moving into the direction of a single statute. It can be a challenge for small businesses to follow a bunch of statutes with a lot of moving parts. There are some ongoing problems with the Small Work process and the Limited Public Works process. Incentives may be helpful encouraging the use of a LPW/SW roster for the owner vs. traditional low bid. Moving forward we may want to consider what can we do process-wise to give owners incentives to use these rosters.

CPARB Chair Zahn shared her appreciation for the work that has been done so far. CPARB voted to accept some of the pieces of the escalation and thresholds presented by MRSC and was published in the [Local Government Public Works Study Report](#). She recommends review of this report to see if it may answer some of the workgroup's questions.

Discussion progressed to the 2-Tier concept which was intended to allow for more limitations for larger owners and less for smaller. However, the current categories identified have been regarding

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size and their capital budget. Unfortunately, the size of an agency or their capital budget does nothing to identify their skill, ability or size of their staff to manage those projects or that funding. Capital Funding for Capital Projects is not issued the same way for all agencies for all projects. Focusing on streamlining the statutory language around the process as well as training and education will go a long way towards a positive solution.

Using a 2-Tier system could double the complexity and reduce overall administrative efficiency.

The 2-tier system needs to be looked at carefully, LPW/SW, is a deviation from the traditional system. There is room for improvement in rewording the process for SW under \$350K to ease the burden on small businesses. Anything over \$350 will require extra caution to maintain fairness and transparency. If limits are raised, you will attract the larger businesses. If the goal is to increase small business participation, then the higher numbers need to be looked at carefully.

Leeann Syder asked for clarification regarding LPW/SW being a deviation from the traditional low-bid system. Public Works (PW) projects are still required to go low bid.

The goal should be a recognizable process for using LPW/SW at the different thresholds that is clearly different than just using the traditional low bid system.

Even though PW is low-bid, there is the perception of the informality of the LPW/SW process that can allow owners to manipulate the outcome or leave open an opportunity to misuse the system.

Next Steps

Administratively Transparent and Efficient Workgroup was tabled pending feedback from the Legislative Writing\Drafting Committee. Chair Frare will work on pulling this workgroup together. The work they will do is an accumulation of what the other workgroups are working on and how we hold ourselves accountable internally and externally.

Feedback from the Diverse Community

Co-Chair Reyes spoke with a few Diverse Community members. They are reluctant to respond for a variety of reasons. She suggested giving them only a couple of questions to answer to get a better response.

She will work on a strategy toward presenting the Small Works Committee's work to Diverse Community associations. She suggested the presentation will be more impactful if it comes from a large public owner like DES, Port of Seattle, Dept of Commerce, and others. All of them need a consistent definition of small business across all the statutes.

Payments & Definitions

Olivia reported that the CPARB Legislative Writing\Drafting Committee has met 2 times, but do not have a consensus yet. They started by looking at state certified minority and certified women-owned business criteria. This includes things like race, gender annual gross revenue, number of employees, and owner's net worth etc. With I-200, the only real criteria that can be used are revenue and employees. If just a definition is desired, then several parameters need to be considered. The numbers will vary by type of construction project (vertical vs. horizontal), and A/E Services. [RCW 39.26](#) does describe Micro, Mini, and Small Business. The Committee is trying to characterize what the revenue levels and employee numbers ought to be.

A question was posed on what happens once a definition is determined. Will a State Small Business Enterprise (SBE) certification be granted? If the use of SBE as the determining factor toward mandatory goals, then the diverse business advocates point out that DBEs are then shut

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out. This is a serious and legitimate concern. The group has elected to try to determine how small is small? Are we informed in construction and A/E services by 39.26 definition of what is micro/mini/small? They are still filtering through the nuances to figure out what is fair to ensure they are targeting the intended firms in the Small Work Roster and the BE/DBI arenas.

Chair Frare thanked the workgroups for their work so far.

Meeting adjourned at 3:02 pm

Action items:

1. Olivia will connect with Dawn to help clarify the definitions her Committee is working on.
2. Bill and Irene will be the contacts for outreach activities.
3. Admin will send out links to the presented workgroup reports with the minutes.
4. The next meeting agenda (8/12)
 - Workgroup report-outs
 - New Business