

**Capital Projects Advisory Review Board
Small Business Task Force
Report & Request for CPARB Action
September 2011**

Submitted by Dan Seydel, Chair of SBTF

CPARB Background

The following background on the creation of Capital Projects Advisory Review Board (CPARB) is provided for context and direction for the Small Business Task Force (**SBTF**).

CPARB was created by the 2005 Legislature to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods. Per RCW 39.10.230 CPARB shall:

- Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods.
- Evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts.
- Establish a Project Review Committee (PRC) to review and approve GC/CM and Design-Build public works projects.
- Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

CPARB created the Small Business Task Force (**SBTF**) in November 2010 with the following mission: to develop recommendations for the Board's consideration on how the industry can open up opportunities for small businesses including minority and African American-owned businesses, and that the scope is limited to design and construction of capital projects. Following is a report of the **SBTF** activities to date with specific recommendations to CPARB.

Input and advice regarding these recommendations was requested from individuals and organizations that expressed interest in the **SBTF** and/or are engaged in efforts related to the **SBTF** Mission (list of meeting attendees is attached). Input has been provided by public agencies, small businesses, minority owned businesses, women owned businesses, contractor organizations, minority business organizations, education, labor and general contractors. All input and concerns have been taken into consideration when drafting the following recommendations.

The **SBTF** held 6 meetings and numerous phone calls and emails between January and August focused on increasing small business access to public contracting opportunities and identifying barriers to inclusion. The **SBTF** discussed, the difficulties small public entities have in achieving inclusion because of lack of staff and recourses necessary to implement policy, programs and procedures legislated to generate opportunities for small businesses. The following recommendations are a result of these meetings and communications and, if adopted by CPARB, will increase access for small businesses including minority owned and African American as the **SBTF** Mission mandates.

It is the desire of the **SBTF** to have CPARB accept these recommendations and develop sponsors in the Legislature to promote these Bills for the purpose of eliminating or minimizing barriers to small business inclusion in design and construction of public projects.

Recommendations	Purpose
<p>Legislated Requirements – (1) The CPARB SBTF recommends amending RCW 39.10.330, and 39.10.360 (draft legislation attached) with the following language related to evaluation criteria - <u>the firm's approach and experience with including small, economically and/or socially disadvantaged businesses, as defined by the public body.</u> This provides public agencies with the option of using the inclusion of small, economically and/or socially disadvantaged businesses as a criterion for evaluating awards through the Design-Build process, the GC/CM process and the Job Order Contracting (JOC) process.</p>	<p>(1)The purpose of this recommendation is to provide public agencies with the ability to make the inclusion of small, economically and/or socially disadvantaged businesses part of the selection criteria for alternative bid processes including, Design-Build, GC/CM, and Job Order Contracting.</p> <p>The proposed language allows public agencies to define small, economically and/or disadvantaged businesses for their purposes. Public agencies will also have the ability to consider a bidder/proposers history of inclusion and inclusion efforts in the agency's evaluation process. The specific emphasis on this group of businesses will increase inclusion.</p> <p>Consistent language in all three alternative bid processes will eliminate confusion.</p>
<p>(2) The CPARB SBTF recommends amending RCW 39.04.155 and 2009 c 74 s 1 (draft legislation attached) to allow public agencies to limit Small Works to small businesses by ordinance or resolution by inserting the following language in the RCW <u>The ordinance or resolution may include establishing small business size limits, as defined by the public body.</u></p>	<p>(2)The current RCW allows public agencies to create a roster of businesses for small projects up to \$300,000. It also provides public agencies with the ability limit competition on projects under \$35,000 to small businesses. The SBTF proposed language allows public agencies to limit competition for Small Works projects to small businesses, as defined by the public body at any threshold up to \$300,000.</p>

(3) The CPARB **SBTF** recommends amending **RCW 39.10.420 and 2009 c 75 s 7** in the following ways (draft legislation attached):

- a) Remove language that limits and/or specifies what public entities may use the alternative bid process, JOC.
- b) Increase the maximum total dollar amount that may be awarded under JOC to \$6,000,000 from \$4,000,000 and add the following language - The department of general administration shall adjust this dollar amount annually for inflation based on the Engineering News Record construction cost index.
- c) Increase the maximum total dollar amount per work order to \$500,000 from \$350,000 and add the following language - The department of general administration shall adjust this dollar amount annually for inflation based on the Engineering News Record construction cost index.
- d) Remove language restricting and number of work orders and the amount of work orders in a 12 month period.
- e) Remove language requiring the use of certified women and minorities and small businesses and replace it with the following - subcontracting opportunities to small, economically and/or socially disadvantaged businesses, as defined by the public body

(3) The **SBTF** recommends that the proposed changes to the JOC be made because the JOC process has proven to be a good process for achieving inclusion.

- a) Currently agencies not specifically identified in the RCW cannot use the JOC process and therefore cannot provide the same level of inclusion as provided by agencies that are identified in the RCW.
- b) Raising the maximum total dollar award and providing annual increases based on the construction cost index will provide additional opportunities for inclusion and will ensure that the JOC award threshold is in sync with inflation related to construction costs.
- c) Raising the maximum total dollar amount per work order and providing annual increases based on the construction cost index will provide additional opportunities for inclusion and will ensure that the JOC work order threshold is in sync with inflation related to construction costs.
- d) Eliminating the language restricting the number of work orders and the amount of individual work orders provides more subcontracting opportunities for small, socially and/or economically disadvantaged businesses.
- e) Eliminate the language that requires businesses to be certified as women and minorities and small because there are numerous businesses in this category that are not certified. The JOC is the only alternative bid process that requires businesses to be certified. There is currently no one definition in the State for "small" and no certification process for "small". Replacing the current language with small, economically and/or

	<p><u>socially disadvantaged businesses, as defined by the public body</u> is consistent with the proposed language for the other alternative bid processes.</p>
<p>(4) The CPARB SBTF recommends moving forward with HB 1970 from last session and adding a companion SB (HB 1970 is attached).</p>	<p>(4) HB 1970 allows public agencies to waive retainage and the payment and performance bond on small projects under \$5,000. Waiving the payment and performance bond at this level will result in more inclusion on smaller projects with minimal risk for the agency.</p>
<p>(5) The CPARB SBTF recommends that CPARB, through the SBTF, continue to explore the possibility of a one stop roster registration application and data base to be used by public entities statewide.</p>	<p>(5) The SBTF has identified the multiple rosters required by public agencies Statewide as a barrier to the inclusion of small, socially and/or economically disadvantaged businesses. The SBTF would like to have the support of CPARB to move forward with investigating the impact of a shared roster on public agencies and the advantage to all businesses wishing to work on public works projects. The subcommittee of the SBTF working on the shared roster concept believes the benefits to a one stop application process to include cost savings and efficiencies for taxpayers, agencies and individual businesses as well as the SBTF target group.</p>

CPARB SMALL BUSINESS TASK FORCE PARTICIPATON LIST			
FIRST	LAST	ORGANIZATION	INDUSTRY
ARAN	BUCHAN	ABC	CONSTRUCTION - ORGANIZATION
DAN	ABSHER	ABSHER CONSTRUCTION	CONTRACTOR
STEPHANIE	CALDWELL	ABSHER CONSTRUCTION	CONTRACTOR
DARYL	PETRARCA	ADAPT ENGR	SMALL BUSINESS - ENGINEERING
TAMMY	STEMPEL	ADAPT ENGR	SMALL BUSINESS -ENGINEERING
SHEA	CARTEWELL	AFC MARKETING	SMALL BUSINESS - PROFESSIONAL SERVICES
ROSALUND	JENKINS	AFRICAN AMERICAN COMMISSION	STATE
VAN	COLLINS	AGC	CONSTRUCTION - ORGANIZATION
JOHN	AHLERS	AHLERS/CRESSMAN	LAW
Ato	Apiafi	Ato Apiafi Architects PLLC	SMALL BUSINESS - A & E
COLIN	BAXTER	AUDIO ACOUSTICS	SMALL BUSINESS-CONTRACTOR
JANICE	BERG	AUDIO ACOUSTICS	SMALL BUSINESS-CONTRACTOR
LES	HANDY	AUDIO ACOUSTICS	SMALL BUSINESS-CONTRACTOR
ROSS	BAKER	BAKER POLICY & COMMUNICATIONS	PROFESSIONAL SERVICES
LARRY	BYERS	CBIC	INSURANCE
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ALEANNA	KONDELIS	CITY OF SEATTLE	AGENCY
MARK	WHEELER	CITY OF SEATTLE FAS	AGENCY
VICKY	SCHIANTARELLI	CITY OF SEATTLE SPU	AGENCY
DANIEL	MALARKEY	COMMERCE	STATE
MICHAEL	HALL	CRH CONSTRUCITON	SMALL BUSINESS - CONTRACTOR
DONALD	KING	DKA ARCHITECTURE	SMALL BUSINESS-ARCHITECTURE
STAN	UHLIG	FEDERAL CONSTRUCTION CONSULTANTS	SMALL BUSINESS - PROFESSIONAL SERVICES
CATHY	MCKAY	FINESSE MARKETING	SMALL BUSINESS - PROFESSIONAL SERVICES
KEITH	WILLIAMS	FLYRIGHT PRODUCTIONS	SMALL BUSINESS - PHOTOGRAPHY/VIDEOGRAPHY
ROY	FREEMAN	FREEMAN ROOFING	SMALL BUSINESS-CONTRACTOR
Greg	Fuller	FULLER ELECTRIC	SMALL BUSINESS- CONTRACTOR
NANCY	DEAKINS	GENERAL ADMINISTRATION	STATE
JOHN	LYNCH	GENERAL ADMINISTRATION	STATE
DANELLE	BESSETT	GENERAL ADMINISTRATION	STATE
KARL	PANLY	GRAHAM	CONSTRUCTION
STAN	KAWAMOTO	J HARPER	SMALL BUSINESS-CONTRACTOR
PAUL	GALENG	KING COUNTY	AGENCY

SANDY	HANKS	KING COUNTY	AGENCY
FRANK	LEMONS	LDC CORP	SMALL BUSINESS-CONTRACTOR
LEN	SIMPSON	LEN-CAN BUILDERS & BLACK BUILDERS ASSOC.	SMALL BUSINESS-CONTRACTOR
LARRY	STEVENS	LOBBYIST	SPECIALTY CONSTRUCTION
VINCE	CAMPANELLA	LYDIG	CONTRACTOR
ED	KOMMERS	MCA OF WW	CONTRACTOR
RUSSELL	MEEDS	MEKO CONSTRUCTION, INC	SMALL BUSINESS-CONTRACTOR
MIKE	PURDY	MICHAEL E. PURDY ASSOCIATES, LLC	SMALL BUSINESS - PROFESSIONAL SERVICES
NORM	STRONG	MILLER HULL	ARCHITECTURE
ROD	BUTTLER	N 3	SMALL BUSINESS - ENGINEERING
BOB	ARMSTEAD	NAMC OF WASHINGTON	NON PROFIT/SMALL BUSINESS
SCOTT	OLSON	OFFICE GO	SMALL BUSINESS-ARCHITECTURE
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DORCAS	NEPPEL	PORT OF TACOMA	AGENCY
GROVER	JOHNSON	PUGET SOUND MINORITY/NAMC	NON PROFIT/LABOR
SAMUEL	MILLER	ROSCOE'S TRUCKING, LLC	SMALL BUSINESS-TRUCKING
KAREN	SAY	SAYBOR	SMALL BUSINESS-CONTRACTOR
MARK	RIRER	SHEET METAL WORKERS - LO66	LABOR
MARK	SNYDER	SMKS ARCHITECTS	ARCHITECTURE
CONSTANCE	BOWN	SNOWDEN COMPANY	SMALL BUSINESS-CONTRACTOR
FORREST	GILLETTE	SOUND TRANSIT	AGENCY
COLIN	HIGGINBOTTOM	SUSTAINABLE FLOORS	SMALL BUSINESS-CONTRACTOR
BRAD	SPENCER	UNIVERSITY OF WASHINGTON	AGENCY
JUDY	GINIGER	UW/WSU	HIGHER EDUCATION
OLIVIA	YANG	UW/WSU	HIGHER EDUCATION
LARRY	VINSON	VBC	SMALL BUSINESS-CONTRACTOR
DAVID	JOHNSON	WA. STATE BUILDING TRADES	LABOR
SHASTA	MCKINLEY	WINWORD ENVIRONMENTAL	SMALL BUSINESS-CONTRACTOR
BOB	MARUSKA	WPPA	AGENCY
Henry	Yates	YATES CONSULTING	SMALL BUSINESS-PROFESSIONAL SERVICES

H-1655.1
HOUSE BILL 1970

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Haigh and Dammeier

Read first time 02/15/11. Referred to Committee on State
Government &
Tribal Affairs.

1 AN ACT Relating to waiving certain requirements for public
works

2 projects costing less than five thousand dollars; amending RCW
3 39.12.040; and adding a new section to chapter 39.04 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04
RCW

6 to read as follows:

7 (1) A state agency or municipality may waive the payment and
8 performance bond requirements under chapter 39.08 RCW and the
retainage

9 requirements of chapter 60.28 RCW for public works projects
with a

10 total contract amount of five thousand dollars or less,
exclusive of
11 sales tax.

12 (2) A state agency or municipality electing to waive payment
and

13 performance bonds under subsection (1) of this section
assumes the

14 liability for the contractor's and their subcontractors'
nonpayment of

15 laborers, mechanics, subcontractors, materialpersons, and
suppliers.

16 The state agency or municipality shall have the right of
recovery

17 against the contractor for any payments made on the
contractor's or

18 subcontractors' behalf.

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1 (3) A state agency or municipality electing to waive the
retainage

2 requirements under subsection (1) of this section assumes the
liability

3 for the contractor's or subcontractors' nonpayment of
laborers,

4 mechanics, subcontractors, material persons, suppliers, and
taxes

5 imposed under Titles 50, 51, and 82 RCW. The state agency or
6 municipality shall have the right of recovery against the
contractor

7 for any payments made on the contractor's or subcontractors'
behalf.

8 (4) A state agency or municipality electing to waive payment
and

9 performance bonds and retainage under this section must
establish and

10 adopt procedures implementing the requirements of this
section.

11 **Sec. 2.** RCW 39.12.040 and 2009 c 219 s 2 are each amended to
read

12 as follows:

13 (1) Except as provided in subsection (2) of this section,
before

14 payment is made by or on behalf of the state, or any county,
15 municipality, or political subdivision created by its laws,
of any sum

16 or sums due on account of a public works contract, it shall
be the duty

17 of the officer or person charged with the custody and
disbursement of

18 public funds to require the contractor and each and every
subcontractor

19 from the contractor or a subcontractor to submit to such
officer a

20 "Statement of Intent to Pay Prevailing Wages". For a contract
in

21 excess of ten thousand dollars, the statement of intent to
pay

22 prevailing wages shall include:

23 (a) The contractor's registration certificate number; and

24 (b) The prevailing rate of wage for each classification of
workers

25 entitled to prevailing wages under RCW 39.12.020 and the
estimated

26 number of workers in each classification.

27 Each statement of intent to pay prevailing wages must be
approved

28 by the industrial statistician of the department of labor and

29 industries before it is submitted to said officer. Unless
otherwise

30 authorized by the department of labor and industries, each
voucher
31 claim submitted by a contractor for payment on a project
estimate shall
32 state that the prevailing wages have been paid in accordance
with the
33 prefiled statement or statements of intent to pay prevailing
wages on
34 file with the public agency. Following the final acceptance
of a
35 public works project, it shall be the duty of the officer
charged with
36 the disbursement of public funds, to require the contractor
and each
37 and every subcontractor from the contractor or a
subcontractor to
HB 1970 p. 2
1 submit to such officer an "Affidavit of Wages Paid" before the
funds
2 retained according to the provisions of RCW 60.28.011 are
released to
3 the contractor. Each affidavit of wages paid must be certified
by the
4 industrial statistician of the department of labor and
industries
5 before it is submitted to said officer.
6 (2) As an alternate to the procedures provided for in
subsection
7 (1) of this section, for public works projects of ((two
thousand five
8 hundred)) five thousand dollars or less ((and)), exclusive of
sales
9 tax, or for projects where the limited public works process
under RCW
10 39.04.155(3) is followed:
11 (a) An awarding agency may authorize the contractor or
12 subcontractor to submit the statement of intent to pay
prevailing wages
13 directly to the officer or person charged with the custody or
14 disbursement of public funds in the awarding agency without
approval by
15 the industrial statistician of the department of labor and
industries.
16 The awarding agency shall retain such statement of intent to
pay

17 prevailing wages for a period of not less than three years.
18 (b) Upon final acceptance of the public works project, the
awarding
19 agency shall require the contractor or subcontractor to
submit an
20 affidavit of wages paid. Upon receipt of the affidavit of
wages paid,
21 the awarding agency may pay the contractor or subcontractor
in full,
22 including funds that would otherwise be retained according to
the
23 provisions of RCW 60.28.011. Within thirty days of receipt of
the
24 affidavit of wages paid, the awarding agency shall submit the
affidavit
25 of wages paid to the industrial statistician of the
department of labor
26 and industries for approval.
27 (c) A statement of intent to pay prevailing wages and an
affidavit
28 of wages paid shall be on forms approved by the department of
labor and
29 industries.
30 (d) In the event of a wage claim and a finding for the
claimant by
31 the department of labor and industries where the awarding
agency has
32 used the alternative process provided for in this subsection
(2) ((of
33 this section)), the awarding agency shall pay the wages due
directly to
34 the claimant. If the contractor or subcontractor did not pay
the wages
35 stated in the affidavit of wages paid, the awarding agency
may take
36 action at law to seek reimbursement from the contractor or
37 subcontractor of wages paid to the claimant, and may prohibit
the
p. 3 HB 1970
1 contractor or subcontractor from bidding on any public works
contract
2 of the awarding agency for up to one year.
3 (e) Nothing in this section shall be interpreted to allow an
4 awarding agency to subdivide any public works project of more
than

5 ((two thousand five hundred)) five thousand dollars for the
purpose of
6 circumventing the procedures required by ((RCW 39.12.040(1)))
7 subsection (1) of this section.

--- **END** ---

HB 1970 p. 4

Marsha Reilly 786-7135
House Committee on State Government and Tribal Affairs
August 16, 2011 (10:16 AM)

AN ACT Relating to incorporating small businesses in public works projects; and amending RCW 39.04.155, 39.10.330, and 39.10.360.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 39.04.155 and 2009 c 74 s 1 are each amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award

contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required

to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. The rules, ordinance, or resolution may include establishing small business size limits, as defined by the public body. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be

invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a

contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed

under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 2. RCW 39.10.330 and 2009 c 75 s 5 are each amended to read as follows:

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; the firm's approach and experience with including small, economically and/or socially disadvantaged businesses, as defined by the public body; and other

appropriate factors. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; and location. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) The form of the contract to be awarded;

(f) The amount to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(g) The schedule for the procurement process and the project;
and

(h) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based on the factors, weighting, and process identified in the request for qualifications. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

(4) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body shall initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(5) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria.

Sec. 3. RCW 39.10.360 and 2009 c 75 s 6 are each amended to read as follows:

(1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance in negotiated and complex projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to self-perform and its ability to perform that work;

(e) The firm's proximity to the project location;

(f) Recent, current, and projected workloads of the firm;

((and))

(g) The firm's approach to executing the project; and

(h) The firm's approach and experience with including small, economically and/or socially disadvantaged businesses, as defined by the public body.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

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Marsha Reilly 786-7135

House Committee on State Government and Tribal Affairs

August 16, 2011

AN ACT Relating to job order contracting under the alternative public works contracting procedures; and amending RCW 39.10.420, 39.10.440, and 39.10.450.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 4. RCW 39.10.420 and 2009 c 75 s 7 are each amended to read as follows:

~~((1) The following public bodies are authorized to use the job order contracting procedure:~~

~~— (a) The department of general administration;~~

~~— (b) The University of Washington;~~

~~— (c) Washington State University;~~

~~— (d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;~~

~~— (e) Every county with a population greater than four hundred fifty thousand;~~

~~— (f) Every port district with total revenues greater than fifteen million dollars per year;~~

~~— (g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;~~

~~— (h) Every school district; and~~

~~— (i) The state ferry system.~~

~~— (2) (a) The department of general administration may issue job order contract work orders for Washington state parks department projects.~~

~~— (b) The department of general administration, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.~~

~~— (3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project.~~

Sec. 5. RCW 39.10.440 and 2007 c 494 s 403 are each amended to read as follows:

(1) The maximum total dollar amount that may be awarded under a job order contract is (~~four~~) six million dollars per year for a maximum of three years. The department of general administration shall adjust this dollar amount annually for inflation based on the Engineering News Record construction cost index.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than two job order contracts in effect at any one time, with the exception of the department of general administration, which may have four job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, 2013; however the job order contract may be extended or renewed as provided for in this section.

(9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter.

Sec. 6. RCW 39.10.450 and 2007 c 494 s 404 are each amended to read as follows:

(1) The maximum dollar amount for a work order is ~~((three))~~ five hundred ~~((fifty))~~ thousand dollars. The department of general administration shall adjust this dollar amount annually for inflation based on the Engineering News Record construction cost index. ~~((For each job order contract, public bodies shall not issue more than two work orders equal to or greater than three hundred thousand dollars in a twelve-month contract period.~~

) (2) All work orders issued for the same project shall be treated as a single work order for purposes of the dollar limit on work orders.

(3) No more than twenty percent of the dollar value of a work order may consist of items of work not contained in the unit price book.

(4) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(5) A public body may issue no work orders under a job order contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads ~~certified women((and)), minority, and small business enterprise~~ subcontracting opportunities to small, economically and/or socially disadvantaged businesses, as defined by the public body, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

(6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW 39.80.040.

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