

**Small Business Task Force  
Report & Request for CPARB Action  
December 2011**

**Submitted by Dan Seydel, Chair of SBTF**

**Background**

CPARB created the Small Business Task Force (**SBTF**) in November 2010 and assigned 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.

The SBTF has been working on a number of initiatives related to the mission for the last year including:

1. Create **"One Stop"** roster registration for businesses interested in consulting, Small Works, and other Roster Programs to be supported by and used by public entities statewide. Business would enter data into one data base as opposed to application(s) for multiple agencies.

**Update**

Catherine McNabb, from the City of Port Townsend has taken the lead on this initiative and we will provide a detailed report at the next CPARB meeting.

2. Raise the level at which public entities may waive payment and performance bonds from \$2,500 to \$5,000.

**Update**

No change to the request made in September that CPARB move forward and create a companion Senate bill to HB 1970 proposed last year.

3. As Job Order Contracting (JOC) has proven to provide a good opportunity of small businesses, including minority and African American, the SBTF recommended making changes to this existing alternative bid process to provide additional opportunities for this group of businesses.
  - increase the number of JOCs per agency
  - increase the dollar level of awards including total award and maximum per work order
  - add an inflation increase
  - increase the number of public entities with access to the JOC process

**Update**

Since making this original request, CPARB has created a taskforce specific to looking at changes to JOC. As chair of the SBTF I am attending those meeting to provide recommendations related to the impact on small, including minority and African American businesses that decisions made by the Taskforce may have on this group. Below is a chart created at the last SBTF meeting that identifies the differences between what the SBTF was asking and what the JOC Taskforce is recommending as of the last CPARB meeting.

SUBJECT	SBTF	JOC Task Force
Agency Expansion	Open to all public agencies	Specific Agency 200 Beds in hospital 75k city 450 K County
Contract Amount	\$6,000,000 – up to	\$6,000,000 – up to
Work order	\$500	\$350k
Inflation Adj	yes	Qualified
# of JOC Contracts		4
		Who? Define pop size
Define Work	Support JOC Task Force define	new
Bonding	Bonding Work In Progress	Bonding Work In Progress

- 4. Add language to chapter 39.10 Design Build, and GC/CM, alternative bid processes making a firms past performance and project specific approach (outreach) to inclusion part of the evaluation process.

**Update**

The SBTF submitted draft language to amend chapter 39.10 RCW at prior CPARB meetings. The recommended language proposed that the existing RCW, related to the evaluation process for the selection of the prime contractor for Design Build and GC/CM projects, include the following –**“the firm’s approach and experience with including small, economically and/or socially disadvantaged businesses, as defined by the public body”**

The SBTF received input from CPARB, SBTF participants, interested parties and groups related to the recommended language. Letters received from the City of Seattle and the Associated Builders and Contractors (ABC) supported the use of the language originally submitted by the SBTF. The Western Washington Chapter of the National Association of Minority Contractors (NAMC) submitted a letter to CPARB requesting that the original language, **“small, economically and/or socially disadvantaged businesses”** be replaced with **“Washington State Certified Minority and Women Owned Businesses”**.

CPARB asked that the SBTF continue to work with interested parties and to try to arrive at a consensus. The SBTF has a regularly scheduled meeting at the conclusion of the CPARB meeting. Attending this meeting were representatives of 3 prime contractors, 3 minority businesses (NAMC members) and 1 woman owned business. This group developed the following language related evaluation of the firms **approach & past performance**.

**Approach** - The firm's outreach plan to include Washington State certified minority owned businesses and women business enterprise on this project.

**Past Performance** - The firms past experience utilizing small, economically and/or socially disadvantaged businesses.

This language was emailed to those who have attended a SBTF meeting or indicated their interest in the actions of the SBTF. The following list contacted me by email, phone, letter or spoke to me personally and offered recommendations or preferences regarding this language.

<b>Government Representatives</b>	<b>Prime Contactors</b>	<b>Non Profits</b>	<b>Minority/Woman/Small Business</b>
Brad Spencer, University of Washington	Dan Absher, Absher Construction	Ed Kommers, Mechanical Contractors Association	Mike Purdy, (small business)
Judy Spencer, University of Washington	Stephanie Caldwell, Absher Construction	Aran Buchan, Legislative Affairs, ABC Western Washington	Marilyn Moch, Phoenix Builders (woman business)
Sandy Hanks, King County	Dick Lutz, Centennial Construction	Charles Rolland, Executive Director, Black Builders	Len Simpson, Len-Can Builders (minority business)
Vicky Schiantarelli, City of Seattle	John Boknecht, Stacy Witbeck	Marilyn Moch, Contractors Resource Center	Robert Armstead, Armstead Consulting (minority business)
Nancy Locke, City of Seattle	Vince Capanella, Lydig Construction	Fred Anderson, President, NAMC	Connie Bown, Snowden Company (minority & woman business)
Bob, Maruska, Port of Seattle			Patti Fuller, Fuller Electric (woman business)
Paul Powell, Port of Seattle			Frank Lemos, LDC (minority business)
			Rod Butler, N3 (minority business)

The following language is the result of the input and recommendations I received. In general, the group agrees that inclusion should be an evaluation element of the Design Build and GC/CM process. Additionally, the group favors evaluating the proposing firms regarding both the firms' **approach** to the specific project and the firm's **past performance** related to outreach.

The group continues to have diverse opinions as to description and definition of the businesses utilized to satisfy the intent of the inclusion **approach** and **past performance** evaluation. We have not reached consensus. Even within groups with presumably similar interests there is not a consensus. For instance, the City of Seattle and King County do not concur and the language originally submitted by the SBTF was authored by Sound Transit. There are minority businesses that support the use of "small" and minority businesses that do not. There are non profits that support the use of "small" and non profits that do not. The discussion centers on the following issues:

1. The use of the word "certified" as part of the business description in **approach** and **past performance** -
2. The inclusion of "small, economically and socially disadvantaged businesses" in both **approach** and **past performance** -
3. Should defining "**small**" be left to individual agencies based on what is appropriate for their business community taking into consideration that the population of minority businesses is limited or nonexistent in some communities while small business are failing to thrive in those communities? Should "**small**" be determined by the existing federal definition or one of Washington State's existing definitions regardless of location?
4. The inclusion of "small, economically and socially disadvantaged businesses" in the evaluation of **past performance** only -

Having considered all stakeholders concerns I am bringing the following 3 alternatives to the Board and ask this body to vote and select one of these versions. I further request that the version selected by the Board move forward as a change to the existing Design Build (RCW 39.10.330 and 2009 C 75 S 5) GC/CM (RCW 39.10.360 and 2009 75 s 6) proposed legislation. This language would be added to the evaluation criteria to be used in the selection of the successful firm.

## CPARB SBTf REQUEST FOR ACTION - VOTE

**Alternative No. 1** - Does not allow the public agency to consider the proposers past performance in meeting inclusion goals using businesses other than Washington State Certified minority and women business enterprises. It does not allow public agencies to accept the proposers outreach approach to businesses other than those that are Washington State Certified minority and women business enterprises.

*"the firm's approach and experience with inclusion of Washington State certified minority business and women business enterprises"*

**Alternative No. 2** – Allows public agencies to consider the proposers past performance using firms that include small, economically and socially disadvantaged businesses and Washington State certified minority and women business enterprises. Does not allow the agency to consider businesses other than Washington State certified minority and woman business enterprises in project approach.

*"the firm's outreach plan to include Washington State certified minority and women business enterprises on this project; and the firms past performance utilizing small, economically and socially disadvantaged businesses and Washington State certified minority and women business enterprises"*

**Alternative No. 3** – Allows public agencies to consider the proposing firm past performance and their approach related to the utilization of small, economically and socially disadvantaged businesses and Washington State certified minority and women business enterprises.

*"the firms outreach plan to include small, economically and socially disadvantaged businesses and Washington State certified minority and women business enterprises; and the firms past performance in the utilization of small, economically and socially disadvantaged businesses and Washington State certified minority and women business enterprises"*

Following is the Design Build and GC/CM RCW. The selected inclusion language will be inserted where indicated on **page 6 of this document, Section 1, I** for Design Build and, **page 9 of the document, Section 2, h** for GC/CM.

**Sec. 1.** 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. 2.** 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