

The Committee reviewed draft legislation, several of which implement recommendations of the CPARB BE/DBI June 2022 report.

The drafts below are what was presented to and discussed at the September 29 Committee meeting. Following discussion, further drafting is underway in preparation for the October Committee meeting.

PROPOSED LEGISLATION

1. Definition of Small Business: There is general consensus around definition and less agreement on whether there should be certification or not. Definition of small business (could be inserted in RCW [39.04](#), [39.10](#) and/or [39.80](#))

“Small business” means a business meeting the definition of small business concern and the personal net worth limitation adopted by the Office of Minority & Women’s Business Enterprises in accordance with [RCW 39.19.030\(7\)\(b\)](#).

“Small business” means a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American Industrial Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof. No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof. The personal net worth of each individual owner of a small business may not exceed 1.32 million dollars or the personal net worth limitation in [WAC 326-20-049](#), whichever is higher.

2. Instead of specific language around prompt pay, the proposal is to take the three main access barriers identified in the BEDBI report and incorporate as scope of 39.10 inclusion plans.

Alternative Public Works Inclusion Plans:
Amend [RCW 39.10.200](#) to address inclusion plans:

The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. In addition, alternative public works contracting can provide increased access to contracting opportunities for disadvantaged business enterprises and small business entities. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest and advance contracting opportunities for disadvantaged business enterprises and small business entities to the extent permitted by law, and to establish a process for evaluation of such contracting procedures. It is the intent of the legislature to establish that, unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in this chapter, subject to the requirements of this chapter. It is also the intent of the legislature that inclusion plans

required by this chapter may include, with public body approval and to the extent permitted by law, features to improve access to opportunities (including outreach and mentorship), capital (including, for example, modified payment provisions), training, and other features intended to maximize the participation and success of disadvantaged business enterprises and small business entities.

3. This is a proposal to provide public owners with another tool in bidding. This allows (not requires) public owners to waive the need for complete plans and specs (takes from SWR RCW language that says "complete plans and specs not required") and to allow electronic quotes instead of sealed bids (which is what many public owners moved to during pandemic). Public owners are very clear that responsibility for level of plans and specs, need for permits still resides with public owner. This is for projects outside the SWR. Projects under this provision are publicly bid (advertised in legal newspaper).

Amend RCW 39.04.020 to address the need for formal bidding and complete plans and specs:

Whenever the state or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the original draft or a certified copy filed in such office before further action is taken. Notwithstanding the provisions of any other chapter, the state or any municipality may waive a requirement for complete or detailed plans and specifications for public work when the probable cost of executing the work does not exceed one million dollars. For such projects, written quotations, including electronic quotations, may be solicited in lieu of formal sealed bidding.

If the state or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of twenty-five thousand dollars, then the state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published 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 such work is to be done. When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.