

Subcontractor Bid Listing Policy Evaluation Committee

Report to the Capital Projects Advisory Review Board (CPARB)

December 9, 2020 Meeting

Co-Chair Bill Dobyms (General Contractors)

Co-Chair Matthew Hepner (Construction Trades Labor)

This communique serves as the Subcontractor Bid Listing Policy Evaluation Committee's report to CPARB. As required by [ESB 5457](#) from the 2020 Session, CPARB must submit a report to the Governor and the appropriate committees of the legislature by November 1, 2020. The report must:

(a) Evaluate current subcontractor listing policies and practices;

(b) Recommend appropriate expansion of the number of subcontractors that may be listed in order to improve transparency and fairness without reducing competitive bidding and access to public works by minority and women-owned businesses; and

(c) Recommend possible project threshold and time frames for purposes of subcontractor listings for all scopes of work that are not required to list under law, including: The timing of subcontractor listing, bond requirements for subcontractors, general contractors standard contract request, and general contractor/construction manager and design-build applications.

In the spring of 2020, CPARB appointed the Subcontractor Bid Listing Policy Evaluation Committee (Committee) to make recommendations regarding ESB 5457 to the Board. Committee members include:

- Bill Dobyms, Co-Chair (General Contractors)
- Matthew Hepner Co-Chair (Construction Trades Labor)
- Olivia Yang (Higher Education)
- Garrett Buckingham (Public Owners)
- Michael Transue (Specialty Subcontractors)
- Denys Tak (WSDOT)
- Scott Middleton (Specialty Contractors)
- Irene Reyes (OMWBE/Private Industry)
- Russell King (Local Government)
- Kyle Dilbert (Ports)
- Jeff Gonzales (DES-State)

The Committee met four times between July 1 and September 8, 2020. Non-committee member participants included additional general contractor, subcontractor, Labor and public owner representatives.

While there was not enough time for a full evaluation of issues in ESB 5457, the Committee is recommending several technical changes to the state's bid listing statute, RCW 39.30.060:

1. **Amend RCW 39.30.060 paragraph (1)(a) to correct the "or" to an "and" wording mistake** that occurred in the enactment of ESB 5457 when adding the subcontractor listing of structural steel installation and rebar installation work to the existing sublisting statute.
 - All members of the Committee agreed the intent of ESB 5457 was to add the requirement for the prime contract bidder to list the names of the subcontractors ... for performance of the work of structural steel installation and rebar installation. This added sublisting is required, within forty-eight hours after the published bid submittal time. [Existing statute requires listing within one hour after the published bid submittal time, the subcontractors who perform the mechanical, electrical and plumbing (MEP) work.]

- However, ESB 5457 inadvertently used the word “or” rather than “and” in RCW 39.30.060(1)(a), such that the prime contractor must list the MEP subcontractors “or” (rather than “and”) the structural steel installation and rebar installation subcontractors.
 - Public owner representatives indicated to the Committee that most public owners are enforcing the listing of the MEP and structural steel installation and rebar installation subcontractors as was intended, but nevertheless the statute should be corrected to avoid any confusion within the contracting community and to eliminate this potential rationale for bid protests.
2. **Amend RCW 39.30.060 paragraph (5) to include exemption of sublisting requirements for Design-Build (DB) and General Contractor/Construction Manager (GC/CM) projects**, in addition to the already exempt job order contracting delivery method.
- The processes and terminology for selection versus bidding are quite different for alternative procurement methods than for traditional design-bid-build procurement.
 - For example, an "invitation to bid" as noted in RCW 39.30.060 is not used for Design-Build, but rather a request for qualifications as the selection is based on qualifications and cost or price related factors.
 - Similarly, the GC/CM is not selected based on an "invitation to bid," but through a Request for Proposals process.
 - Timing of identification of subcontractors in both Design-Build and GC/CM projects, makes it impossible for submittal of the subcontractors lists at time of selection.
 - Subcontractors are generally not identified at the time a Design-Build Team submits their qualifications to the public agency.
 - For GC/CM, subcontractors submit bids to the GC/CM after the GC/CM has already been selected and has executed a contract with the public agency. RCW 39.30.060 requires the prime contract bidder to submit the required subcontractors list soon after their bid, but with when the GC/CM is selected, subcontractors have not been identified because RCW 39.10.380 requires the GC/CM to competitively bid all subcontract work.
 - There is confusion as to the intent of the listing law with regard to Design-Build and GC/CM because RCW 39.30.060 currently explicitly exempts another alternative procurement method: Job Order Contracting.
3. **No additional subcontractor listings or expansion should be required at this time.** Rather, the Committee suggests that additional time be given for understanding the effects of implementation of ESB 5457, further evaluation, and stakeholder input, with another report by November 1, 2022. Committee members believe that the statute is in need of correction (#1 above) before suggesting any additional subcontractor listing requirements.