

Small Works Committee

Meeting Notes 6/10/2022

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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
x	Erik Martin, Counties
x	Karen Mooseker, School Districts
x	Rachel Murata, OMWBE

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

Alternates:

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

Guests:

x	Talia Baker, DES
x	Maja Huff, WSU
x	Melissa Van Gorkom

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

Meeting started at 1:33 pm

Chair Bill took roll to establish a quorum.

Committee Membership:

Chair Frare would like to make sure the Committee has all the voices needed to ensure as much inclusion as possible.

Bill has reached out to the DES Diversity Representative, Charles Wilson, to enlist his resources and assistance. Bill feels that small and diverse contractor participation is necessary to meet the committee mission which includes incubation of small and diverse firm. Hearing their voices will help to address their needs and barriers instead of making assumptions from an agency perspective.

Irene reached out to contacts she has with small and diverse contractors to encourage participation from groups like NEMAC (sp?) and TABR (sp?). She reported that she is still working on getting responses. Everyone is pretty busy.

Angela Peterson asked if anyone on the committee has reached out to any small business contractors they work with? She has some who complain a lot about the low bid situation. She will forward their contact information to Irene to see if they are interested in participating.

Bill plans to reach out to Scott Middleton with the MBA to enlist his participation.

Committee reviewed the List of Policy Topics

The List of Policy Topics to Address

1. Retainage and Bonding:

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Retainage ensures that workers, taxes, liens and other fees are paid by the contractor in accordance with state law. A performance bond guarantees that the work will be completed for the price that was bid in the event a contractor is unable to do so. Both are established risk mitigation measures that have been in practice for decades.

The State has received feedback that these measures disproportionately affect small and minority businesses, though higher fees, and cash flow.

Are there other ways to mitigate these risks on smaller contracts?

Discussion:

- Why do we have performance & retainage Bonds? To protect workers, agencies and other contractors involved. Is this a barrier for small and diverse businesses? If we are shifting the responsibility away from the contractors, then how will that be mitigated? If retainage is removed then how will the workers and subs be protected from default?
- Projects over \$35K need payment and retainage bonds but for Transportation they only need payment bonds and do not hold retainage.
- It takes a long time for retainage to be released and that creates capital issues. Also, the newer contractors assume the bond they file with L&I applies to all other entities and do not understand why they need to file a second one.
- Small businesses do not have confidence they will be listened to without retribution, retaliation, or being labeled.
- Workgroup members include: Angela Peterson, Mark Riker (or delegate), Jolene Skinner, Cindy Magruder, Olivia Yang (Payments)

2. Equitable Distribution:

The State has received feedback that the same contractors are receiving small works contracts. What policy provisions can we make within a low bid environment, that will promote equitable distribution of these contracts? Some ideas to consider are:

- a. Removing successful contractors from future invitations to bid
- b. Ensuring competition between like contractors, MBE, WBE, VBE, SBE

Discussion:

- Some contractors have shared concerns that there isn't an equitable distribution of work across the roster and that the same firms keep getting picked over and over. What method can we use to ensure everyone on the roster gets an opportunity to bid? Tracking who was on the last job? Only invite business who are identified as veteran-women-minority, etc.? It would be a shame to get boxed into one method of solicitation.
- Is there some statistical data regarding usage of each business? We want to avoid making decisions based on anecdotal information. Is there a state source? (L&I has a wealth of data that can be shared when we are ready for it.)
- Dawn shared that her port hears the same complaints, but they do make a point to include diverse businesses in the solicitations. It's an important topic to discuss.
- The fact is that a lot of the same primes and subs do get picked repeatedly and the challenge is to identify why so we can determine how to make it more equitable.

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- Olivia inquired for clarification if the discussion was specific to a rotation of all firms on the roster? Yes, it's at the aggregate level. What can we do to ensure equitable competition? DES invites the whole roster because they found that when only a select number of firms are selected, they are frequently too busy to submit a bid. So, DES ensures a competitive bid by inviting the whole roster.
- Some of the remote small ports use other rosters in their area, but due to their location there is a very limited number of firms if any in their area. This is a topic for this workgroup to discuss as well.
- Irene noted that there also needs to be some accountability measurements with a checklist or at least some way to be transparent and equitable through the process.
- Workgroup members include: Dawn Egbert, Rachel Murata, Cathy Robinson and Brenda Nnambi.

3. Rosters - Developing and Maintaining:

- a. Qualifications to get on and stay on a roster
- b. Definition of Small Business
- c. What about definitions for Minority, Women, and Veteran-Owned Businesses?
Certified or Self-identified?
- d. Should be consistent across the statute
One statewide roster? Individual contracting agency rosters?
- e. Concern about broader interpretation and unintended consequences.
- f. May develop a Small Business workgroup as a sub workgroup

Discussion:

- Legislative Writing\Drafting Committee (LWDC) will be defining Small Business. Olivia will be the bridge between LWDC and the Developing & Maintaining Rosters workgroup.
- Workgroup Members Josh Klika, Karen Mooseker, Brenda Nnambi, Rachel Murata, Olivia Yang (bridge)

4. Thresholds\Cost Escalator\Two-Tier System:

Current rates are: Small Works (most \$350,000- Ports & irrigation Districts \$300K), Limited Public Works (\$50,000), No-Bid (Some contracting agencies \$75,000)

Discussion on uniform bid limits for each of these categories. A way of enacting this concept is to link poly-sub enabling statutes to the small works statute to ensure consistent and uniform application of small works requirements across all public contracting agencies

Automatic Cost Escalation, How often and by what measure?

The State has received feedback that thresholds should be adjusted for a contracting agencies size and level of expertise or sophistication. The idea presented was a two-tier system that had higher limits for contracting agencies with large capital programs and smaller limits for contracting agencies who had less experience. Does this idea have merit?

Discussion:

- This is a good place to find a solid middle ground.

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- Workgroup members include: Dawn Egbert, Karen Mooseker, Scott Middleton, Mark Riker, Cathy Robinson, Jolene Skinner, Beck Eatch (non-voting member), Olivia Yang (Bridge)

5. Administratively Transparent and Efficient

- a. Prompt Payment
- b. Standard Contract Templates
- c. Publication in a legal newspaper
- d. Notice to contractors not invited to bid

➤ This group is tabled pending feedback from the Legislative Writing\Drafting Committee

Discussion Highlights:

Workgroups were established to discuss each of these topics and they each will explore their topic and bring a summary and recommendations for policy change to the larger committee.

Feedback can be forwarded to Irene, Bill and Talia (CPARB@des.wa.gov).

Irene pointed out that some of the smaller businesses don't want their names out. She will connect with the larger organizations to see if there is a representative from each that will have time to commit to the Committee.

Dawn agrees we need to hear from the smaller businesses, and the Legislature needs to hear their concerns as well. This committee can help do that.

As we identify and solidify the what the issues are and possible solutions, members of this committee will need to go to those business groups and talk to them about our ideas on the rewrite of the statute and get some feedback before we put them into action.

Irene suggested on strategy could be that the committee develop 3-5 questions to start and send them out to the contractors and owner to get some feedback, instead of approaching them with a full plan. Collect that feedback. (i.e. Would you like the ceiling to be raised? And why?)

Would contractors involved in the Local Government Public Works Study be open to assisting? MRSC collected the data and developed the report, CPARB only supported part of the recommendations.

Workgroups were developed and leads were identified. The larger groups are asked to send times to Talia so she can post them online to ensure they meet public notice requirements due to committee quorum possibilities.

Olivia Yang made the motion to Adjourn. Mark Riker 2nd the motion.

Meeting adjourned at 2:44

Action items:

1. Workgroup leads to schedule first meeting, establish Lead\Co-Leads, meeting schedule, and begin discussions, and send times to Talia to add to the Committees webpage.
2. Irene will check in with her diverse business contacts

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3. Bill to reach out to Scott Middleton and Talia will make sure he is invited to all meetings.
4. The next meeting agenda (7/8)
 - Workgroup report-outs
 - Feedback from Diverse Community
 - Olivia to report on payments and definitions from BE/DBI and LWD Committees
 - New Business