

Capital Projects Advisory Review Board  
**Legislation Writing\Drafting Committee**  
Minutes 6/23/2022

**Meeting Location:** via Zoom

Join Zoom Meeting from PC, Mac, Linux, iOS, or Android:

<https://wsu.zoom.us/j/94900556396?pwd=Y3Z6ajkrR21abUkrVXIhd0Njd2tRUT09&from=addon>

Meeting ID: 949 0055 6396

Passcode: 955065

**Members:** (10 members, 1 alternates 6 = quorum)

   **x** Nancy Deakins, DES Owner-State  
   Bill Dobyns, General Contractors  
   Andrew Greene, Perkins Coie  
   Erik Martin, Counties  
   **x** Scott Middleton, MCAWW  
   **x** Mark Nakagawara, Cities

   **x** Irene Reyes, Private Industry\DBEs  
   Robynne Thaxton, Private Industry  
   Lisa van der Lugt, OMWBE  
   **x** Olivia Yang, Higher Education  
(*Vacant, Construction Trades Labor*)

**Alternates:**

   **x** Rachel Murata, OMWBE (*alternate*)

   **x** Maja Huff, Washington State University  
(*alternate for Andrew Greene*)

**Guests:**

   **x** Melissa Van Gorkom  
   Robynne Thaxton  
   **x** Santosh Kuruvilla

   **x** Kara Skinner  
   **x** Jolene Skinner

### Agenda

3:00 pm Members Gather  
3:13 pm Approve list of meeting topics  
3:15 pm Definition of diverse/small business  
- Special guests: Kara Skinner & Jolene Skinner  
4:00 pm Adjourn

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Item: **Members Gather**

- Call to Order
- Quorum confirmed

Action by: Committee

Status: Approved and complete

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Item: **Approve list of meeting topics**

**Meeting 1 (today)**

- Definition of diverse/small business
- Present context from BE/DBI report
- Existing registry/certifications
- OMBWE certification requirements
- Goods & services definitions
- Basis for proposed diverse/small business definition
  - annual gross revenue
  - number of employees
  - not re-invent the wheel and use/modify existing definitions (SBA, etc.)

**Meeting 2 (July 7)**

- Application of proposed definition
- Who "owns"? Certification? Registry?
- Accountability (how to check firm meets criteria)
- How having definition would help public owners
- Impact on Data collection

**Meeting 3 (July 21)**

- "Prompter" payment
- Existing statutes
- Scope: undisputed work/pay app
- Payment From
  - Prime to sub
  - Owner to prime
- Implications/related issues
  - Firm's cash flow
  - Credit rating
  - Bonding
  - Retainage

**Meeting 4**

- Review draft legislation

**Meeting 5**

- Review draft legislation

Action by: Committee

**Proposed:** Use this list for the next three meetings and revisit additional topics in September.

- The bid-listing topic and PCR approval topic discussed at the last meeting are already covered by existing committees and are not current priorities for the LWD committee.

Status: Approved

Item: **Today's topic: Definition of small/diverse business**

- The Office of Minority and Women's Business Enterprise (OMWBE) certifies diverse/small business and there are different city/state/federal self-reporting measures as well—this brings up problems for accurately tracking utilization. The goal of this committee is to come up with a single definition that is complementary to existing definitions—this may include going back and refining existing definitions.

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- RCW 39.26 (Procurement of Goods and Services) includes being in-state (having its principal office located in Washington State) in its definition of small business and allows businesses to certify with OMWBE or to self-report (under penalty of perjury) as an independent business and qualify based on employee number (max 50) or gross annual revenue (max \$7 million).
  - RCW 39.26 also defines microbusiness and minibusiness based on gross annual revenue.
  - RCW 39.10 (Alternative Public Works Contracting Procedures) points to RCW 39.26 to define small business.
  - RCW 39.04 (Public Works) points to microbusiness and minibusiness as defined in RCW 39.26.
- Multiple participants shared the concern that qualifying as a small business solely based on employee number leaves the door open to subcontracting out more work and having a large business with few employees.
  - However, a business's number of employees is data that is easier to capture (L&I has access to this) than a business's revenue.
- Given how large this definition is, multiple participants agreed a separate discussion is needed on how to verify small businesses qualifying under the terms in RCW 39.26.
- The issue of in-state preference/reciprocity advantage generated some discussion. The legislative intent was described as benefiting small business by benefiting the local economy—if the local economy thrives, so will small business.
- The U.S. Small Business Administration (SBA) defines small business according to employee number and revenue metrics, but there was concern from multiple participants that the SBA definition is too broad and does not always mean a truly small business.
  - To be considered a small business by the SBA, there is a minimum percentage of self-performed work. This helps to address the concern of gaming the system by subcontracting out more work and having a larger business with few employees.
- **Proposed:** develop a definition of small business (potentially under RCW 39.04 - Public Works) that is complementary to the definition in RCW 39.26 (Goods and Services) and work out a percentage of the SBA metrics that is appropriate for truly small business.
  - There was an additional suggestion to develop a registry owned by OWMBE for which you can only qualify if your revenue is capped at \$7 million, but concerns were voiced that creating another registry will raise more barriers to participation.

Item: **Next meeting's topic: Definition of small/diverse business**

- Continued discussion of today's topic, with additional subtopics below:
  - Issue of preference for in-state businesses
  - Which existing definition (or what combination) will be used to develop this committee's recommendation
  - Whether to modify existing definitions

Action by: Committee

- **Goal for next meeting:** develop a recommendation that is ready to take to the next CPARB meeting

Status: Approved

Action Items for Next Meeting

- **Send pre-reading for next meeting:** pages of the BE/DBI report discussing the "why" for this task
- Nancy Deakins to find an alternate from DES to attend the next meeting

Adjourn at 3:58 pm