

Capital Projects Advisory Review Board  
**Legislation Writing\Drafting Committee**  
Minutes 8/4/2022

**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:** (9 members, 1-2 alternates; 5 = quorum)

<input checked="" type="checkbox"/> Nancy Deakins, DES Owner-State	<input checked="" type="checkbox"/> Irene Reyes, Private Industry\DBEs
<input checked="" type="checkbox"/> Bill Dobyns, General Contractors	<input type="checkbox"/> Lisa van der Lugt Sarah Erdmann, OMWBE
<input checked="" type="checkbox"/> Andrew Greene, Perkins Coie	<input checked="" type="checkbox"/> Co-chair Yang Yang, Higher Education
<input type="checkbox"/> Erik Martin, Counties	<input checked="" type="checkbox"/> Erin Frasier
<input checked="" type="checkbox"/> Scott Middleton, MCAWW	
<input type="checkbox"/> Mark Nakagawara, Cities	

**Alternates:**

<input type="checkbox"/> Rachel Murata, OMWBE ( <i>alternate</i> )	<input checked="" type="checkbox"/> Maja Huff, Washington State University
<input type="checkbox"/> Penny Koal ( <i>alternate</i> )	<input type="checkbox"/>

**Guests:**

<input checked="" type="checkbox"/> Melissa Van Gorkom	<input type="checkbox"/>
<input type="checkbox"/> Robynne Thaxton	<input checked="" type="checkbox"/> Kara Skinner
<input type="checkbox"/> Santosh Kuruvilla	<input checked="" type="checkbox"/> Jolene Skinner
	<input checked="" type="checkbox"/> Linda Lee Womack

**Agenda**

3:00 pm Members Gather  
3:04 pm Approve past meeting minutes + today's agenda  
3:08 pm Meeting topic: Definition of small/diverse business in public works  
4:00 pm Adjourn

---

Item 1: **Members gather**

- Call to Order
- Quorum confirmed

Action by: Committee

Status: Approved and complete

**Item 2: Approve past meeting minutes + today's agenda**

Action by: Committee  
Status: Approved

**Item 3: Meeting topic: Definition of small/diverse business in public works**

- Co-chair Yang introduced the topic by recapping the discussion from the July 7<sup>th</sup> meeting and putting forward the idea of adapting the goods & services definition of micro, mini, and small business (RCW 39.26) to construction (RCWs 39.10, 39.04) or AE services (RCW 39.80), potentially adjusting the employee number & annual gross revenue benchmarks for construction and AE services.
  - RCW 39.26 defines small business as having *either* \$7 million in annual gross revenue *or* 50 employees, which some members viewed as problematic for construction, given the possibility of subbing out the majority of work and taking in much larger gross annual revenue with fewer employees.
  - Multiple members agreed that benchmarks for employee number and annual gross revenue should be industry-specific, i.e., how it's laid out in the federal Small Business Administration (SBA) definition.
  - The OMWBE certification for small business follows the SBA and the USDOT DBE program, which is centered around public works.
  - Given that small business may be defined using larger numbers at the federal level than what is appropriate for defining small business at the state level, the idea was put forth that using micro, mini, and small (or other "smaller than small" levels) in the definition for construction and AE services could allow for better pinpointing the "goldilocks" numbers for the businesses the group is trying to serve. For instance, small start-ups have different support needs compared to established small businesses.
  - It was proposed to use OMWBE's certification standards (employee number *and* annual gross revenue) as the baseline for "small" and then go smaller for micro and mini businesses. Multiple members agreed to move forward with this idea.
- Members discussed how these definitions could be used. Examples included:
  - Waiving retainage and bonds for micro businesses (\$3500 and under).
  - Allowing a design-builder to pay a small business sooner for undisputed work.
  - How a design-build firm can improve/create opportunities for training for small firms—not just improving/creating opportunities for work.
- Members discussed how "disadvantaged" comes into these definitions. RCW 39.10 points to the standard for how disadvantaged is used and defined in the OMWBE certification, which is tied to the DBE size standards and follows the federal SBA standards. It looks at numbers over a 3-year average, and numbers are industry specific.
- While certification requires a greater amount of verification and paperwork, not verifying was flagged as something that creates an unequal environment for minority/women-owned businesses to be certified.
- Jolene Skinner shared a presentation of L&I data gathered on work performed in FY2022 (7/1/21-6/30/22) under contracts using public funds. These numbers were pulled from required online filings including a statement of intent form (at start), weekly certified payroll reports (during project), and an affidavit of wages paid form (at finish), in comparison with L&I's data

on worker's compensation insurance filings.

- o \$168,157 was the average contract amount for contractors with 25 employees or less.
- o Another member shared that this data backs up the idea that using employee number only is not a good way to define small business.
- o Jolene also shared a chart from the MRSC+L&I study on contract amount of public works projects by agency type (FY2013-2019).
  - This study did not include the higher education industry.
- o Members discussed how/whether COVID has impacted these trends. Jolene shared that L&I has seen the greatest number of these forms over the last year, and it's continuously increased over the past two+ years.
- Given the group's support for the idea of using 3 different levels of "small" in the new definition, it was proposed that a small working group could build that idea out before the larger group reconvenes on this topic.
  - o Sarah and Rachel would perhaps be a part of that group (with Co-chair Yang), and it was discussed that they would use OMWBE's current thresholds for the different categories as a starting point for small, then see if they can work out new thresholds to bring back to the larger group for smaller and smallest. Co-chair Yang will coordinate this.
    - This small working group can grapple with whether 25 employees is too large a threshold for small business in the construction vs. AE services industries.
  - o When the larger group reconvenes on this topic, they can review what the smaller working group has pulled together and debate whether to require certification along with the new definition of small business.
    - Irene will review how the procurement reform folks developed the idea of micro, mini, and small, to provide further context during this discussion.

Action by: Committee  
Status: Complete

**Item 4: Next Meeting Topic: Continued – Prompter pay for subcontractors**

Action by: Committee  
Status: Approved

**Item 5: Next steps and action items**

- Co-chair Yang will coordinate with Rachel, Sarah, etc. to form a small working group to pull together some proposed numbers for gross annual revenue and employee number for small, smaller, and smallest business for the larger group when they reconvene on September 1<sup>st</sup>.
- Irene will find out more about how the definitions for micro, mini, and small in RCW 39.10 were put together and what was the intent behind them (also for the discussion on September 1<sup>st</sup>).

Adjourn at 3:55 pm