

Small Works Committee

Meeting Notes 10-14-2022

Page 1 of 3

Members: (16 members, 3 alternates 9 = quorum)

x	Dawn Egbert, Ports
	Bobby Forch Jr., Diverse Business
x	Bill Frare, DES – Owner State (Co-Chair)
x	Josh Klika, MRSC
	Erik Martin, Counties
x	Scott Middleton, MCAWW
x	Karen Mooseker, School Districts
x	Rachel Murata, Results WA
	OMWBE (Vacant)

	Brenda Nnambi, Transit
x	Irene Reyes, Private Industry\DBEs (Co-Chair)
	Mark Riker, Labor
	Cathy Robinson, Cities
x	Jolene Skinner, L&I
	Kara Skinner, Insurance/Surety
x	Olivia Yang, Higher Education
	Corey Fedie, Hospitals

Alternates:

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

Guests:

x	Talia Baker
x	Cindy Magruder
x	Clair Moerder, MFA

x	Leeann Snyder
x	Jon Rose
x	Janice Zahn

Meeting started at 1:42 p.m.

Review/Discuss Draft Presentation for October CPARB Meeting

Discussion Highlights:

Members heard a recap of the discussion at the October 13 CPARB meeting. While most ideas in the Small Works Committee report did not raise significant controversy, the issue of projects under \$1 million raised enough concerns that members agreed it may be too controversial to include in the package moving forward.

Single Statewide Roster/Portal

Members discussed the issue of a single statewide roster for public works. The idea was proposed to create a single “front door” registration that taps into existing rosters across the state. This approach would balance:

- Small/diverse businesses’ need for administrative efficiency in signing up and being noticed for projects, and
- Contracting agencies’ need for a reliable pool of bidders, which was a concern in shifting away from existing rosters, which they rely on for both planned and emergent work.

Furthermore, this could function as a phased approach to potentially shifting to a single statewide roster in the future, by allowing time to fine-tune the system and populate the statewide roster.

- Members supported the idea of the single “front door” system and continued to discuss how a single roster might be administered without mandating it in this package.

Small Works Committee

Meeting Notes 10-14-2022

Page 2 of 3

Additional suggestions for designing the statewide roster included:

- Allowing contracting agencies to add data from their individual rosters.
- Ensuring there is no fee for service.
 - If the Municipal Research and Services Center (MRSC) is to expand their existing statewide roster, this could mean obtaining a grant through Commerce to update MRSC's roster fulfillment criteria.
- Allowing contracting agencies to sort by county and category to easily narrow down based on needs.

It was also shared that the Office of Minority and Women's Business Enterprises (OMWBE) is working with MRSC to share data when new women- and minority-owned businesses (WMBEs) are certified by OMWBE, so that information is easily transferred into the MRSC roster, reducing the amount of data entry required of small businesses to join the roster.

- In the current process, OMWBE shares information with newly certified WMBEs on existing rosters and how to register for them.

If a definition and certification of small business is also added, this could remove another step, because MRSC could draw from an existing list of certified small businesses.

Retainage & Bonds

Members were reminded that RCW 39.04 allows a public owner to waive the payment/performance bond and retainage requirements for limited public works contracts at \$50K or less, so long as the owner takes on the liability. For other small public works contracts up to \$350K, a bond is required but the retainage requirement can be waived.

Members discussed that there is consensus to remove the requirement for a payment/performance bond for small public works contracts up to \$5K, but not yet to remove the requirement for contracts over \$5K.

- A benefit of still requiring a bond for contracts over \$5K is for smaller contractors to develop a bond history to ultimately lower their bond premiums.
- Further, since this is a removal of the bond requirement and not a waiver—and therefore nobody is taking on the liability—keeping the bond requirement in place for contracts over \$5K ensures the worker is protected.
 - It was noted that payment owed on contracts without a payment/performance bond in place must be able to be covered by the contractor's licensing bond. L&I data on filings for projects under \$5K indicated that the maximum number of hours filed was less than 20, and the majority was less than 15—all amounts that could be covered by a contractor's licensing bond.

While the requirement for retainage can be removed for projects up to \$5K, members discussed whether waiving or reducing retainage for projects over \$5K would result in hardship for smaller contractors, noting that if the contracting agency were to waive retainage, they would be liable to pay any wage labor claims.

- Members discussed allowing contracting agencies to waive or reduce retainage at their discretion, based on the risk associated with the contract (not based on preference for a contractor). It was agreed that this decision must be noted in the bid documents, so that contractors know what they're bidding on in advance and to avoid giving preference post-award.

Small Works Committee

Meeting Notes 10-14-2022

Page 3 of 3

- Members also discussed releasing retainage at project substantial completion (i.e., 95% overall) with the expectation that what is released to the prime flows down to the subcontractors, who would likely have completed an even higher percentage at that point. Members did not reach consensus on this sub-issue for the package moving forward.
- It was agreed that no efforts will be made to change the popular practice allowed in RCW 39.08 of waiving the payment/performance bond requirement for projects under \$150,000 but holding 10% of the contract amount as retainage in lieu of a bond.

Definition/Certification of Small Business

Members heard from a representative of the Legislative Writing/Drafting Committee that a definition of small business is in the works, based on the OMWBE definition of WMBEs but removing the race/gender preference, so it is based on the business owner's net worth (or individual owners' if multiple) and gross annual receipts. Thresholds for gross annual receipts would be dependent on business category but would not exceed \$28.48 million, averaged over three years.

- A concern with this approach is that most businesses qualifying by these standards are not actually small. The idea was proposed to further define "mini" and "micro" businesses, setting thresholds at a percentage of those used to define small business. Data is being gathered by OMWBE to determine the appropriate percentages to use.
- Another area for discussion is whether to require certification or not. Members felt that although it may increase administrative burden to certify small business, it is important to ensure fairness and parity. Creating a definition of small business without requiring that small businesses be certified opens the door to more competition from non-WMBEs.
- Some members expressed concern that limiting participation in the small works roster to certified small businesses could limit contracting agencies' ability to find contractors for emergent work. Requests were made to see the numbers of contractors who would qualify as small in different regions.

When discussing who would certify small businesses, OMWBE was proposed as they already certify WMBEs and would have a process in place. This would provide a benefit to small businesses because there would be less information required to prove a business is small than to prove it is women- or minority-owned. This would cut back on the time required for a small business to certify.

Action items:

1. Scott Middleton will share the committee's discussion on retainage and bonds with Mark Riker.
2. Olivia Yang and Co-chair Reyes will conduct outreach to the small business community.
3. Olivia Yang and/or Talia Baker will coordinate whether to invite the Small Works Committee to attend the Legislative Writing/Drafting Committee meeting on 10/27 and/or book an additional Small Works Committee meeting for 10/28.
4. Co-chair Frare will distribute a draft outline to the committee by 10/18.

Meeting adjourned at 3:12 p.m.

References/Resources:

Slide deck – Not submitted for reference