

Capital Projects Advisory Review Board  
**Legislation Writing\Drafting Committee**  
Minutes 9/1/2022

**Meeting Location:** via Zoom

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

**Alternates:**

<input checked="" 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 type="checkbox"/> Kara Skinner
<input checked="" type="checkbox"/> Santosh Kuruvilla	<input checked="" type="checkbox"/> Jolene Skinner
<input type="checkbox"/> Linda Lee Womack	<input checked="" type="checkbox"/> Robin Strom
<input checked="" type="checkbox"/> Michael Transue	<input type="checkbox"/>
<input checked="" type="checkbox"/> Janice Zahn	<input checked="" type="checkbox"/> Sharon Harvey
<input checked="" type="checkbox"/> Cathy Robinson (UW)	<input checked="" type="checkbox"/> Karen Mooseker

**Agenda**

3:00 pm Members Gather  
3:05 pm Approve past meeting minutes + today's agenda  
3:07 pm New Meeting Time/Duration  
3:10 pm Meeting topic: Issues Ballot  
4:00 pm Adjourn

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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: Issues Ballot**

**1. Definition of small business**

- a. Need: Recommendation from CPARB BEDBI report**
- b. Use existing OMWBE criteria for state certified women and minority own firms as foundation, but race and gender neutral. Also coordinate/be informed by SBA criteria (YES/NO)**
- c. Criteria implemented consistent with OMWBE (in WAC, not in RCW) (YES/NO)**
- d. "Small/smaller/smallest" (YES/NO)**

**2. Certification of small businesses**

- a. Certification (YES/NO)**
- b. Certification managed by OMWBE (YES/NO)**

- Members discussed Issues Ballot Topics – Definition of Small Business
  - Committee is in discussion regarding what the small business certification will be used for and acknowledges that it could be used in the small works roster, which has not been thoroughly discussed. There will be a threshold work group meeting Tuesday, September 6, to talk through the potential of a set of projects in the small works roster to be open only to certified small businesses.
- Members discussed definition of small business to follow up on CPARB BEDBI report
  - Committee has previously spoken of creating a new state certification for small businesses based on the OMBWE state certification for minority and women owned business, based on thresholds for net worth of owner, firm annual receipts, and or firm size, depending on the next code.
  - Members emphasized that there are a lot of moving parts and that the small works roster has not been fully discussed yet, nor has the potential use for the small business definition. These conversations need to happen before the committee can fully commit to one.
  - Members agreed that the concept of the SBA definition is a step in the right direction.
- Members discussed criteria implemented consistent with OMWBE (in WAC, not in RCW)
  - There was a discussion about whether to have the definition in the RCW as direct language or as a reference to another guiding document.
  - It was clarified that the member decisions during the meeting are tentative based on how other conversations go.

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- Members agreed tentatively with SBA-informed criteria for a state definition of small business.
- The committee discussed if the definition should exist in the WAC or in the RCW. Members said it may be easier to find in the RCW, but a potential benefit of the language appearing in the WAC is that the dollar amounts can be altered easier without legislative action.
- Members clarified that they are agreeing with the SBA concept and the way it defines small businesses by sector and NAICS code. Potential language could say the state of WA definition of small business is X percent of SBA, so it is in the RCW but tied to SBA. As the SBA makes changes, this allows the RCW to change.
- Current WAC code (WAC 326.20.099) defines business size and relates it back to the SBA standards and the NAICS code because the RCW says that a small business enterprise is defined as by OMWBE.
- Members of the committee would like to have the definition in the RCW, not only in the WAC, and they feel there is likely a way to harmonize the two.
- If members feel strongly that the definition is too big in some areas, it would be simple to make it a different percent.
- When OMWBE looks at a business size, they look at two factors, one being the statutory gross cap receipts, which is a standard number out of three years of first receiving, which is \$28.48 million. Then there is the NAICS code limit, based on specific industry. Currently, the OMWBE looks to the NAICS code limits only when the funds come from the Federal Aviation Administration.
- The OMWBE also considers the net worth of the owner of the firm, which is capped at \$1.32 million excluding the value of their primary residence.
- OMWBE does two types of certifications, federal certification and state certification. \$1.23 million is the personal net worth cap for both.
- OMWBE currently only looks to SBA regulations regarding business size. It was discussed that one of the nuances in the definition to be considered is if the definition is solely SBA business-sized, baseline excluded, or if the committee should consider adding language around SBA baseline plus net worth of X.
- Members discussed and reviewed current programs that OMWBE has in existence along with their requirements.
  - OMWBE has programs for women and minority owned businesses at the state and federal level. At the federal level, they also have the small business enterprise program. All the programs have the same requirement that is it a small business, which is considered a cap of \$28.8 million of gross receipts as well as the NAICS code limit. In addition to being a small business, the owner also must be economically disadvantaged, meaning their personal net worth is below \$1.32 million. For the race and gender conscious programs, participants must be socially disadvantaged including being a woman or minority.
  - The USDOT sets standards for gross income limit and overall limit cap for the disadvantaged business enterprise program. \$28.48 million is in the code of federal regulations which is determined by the DBE program cycle. OMWBE and other recipients are then told that number. This is specific to transportation and OMWBE uses this number.
  - This 28.48 million is used as a cap number by all agencies except the Federal Aviation Administration, which uses different numbers based on funding source.

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- If an organization receives funding from a federal agency besides the Federal Aviation Administration, they are subject to the \$28.48 million cap as determined by SBA limits. However, if they do not, then the NAICS code limits will be used.
- Committee confirmed that tentatively the SBA definition should be in the RCW, and they would like it tied to the SBA.
- One member asked if, wherever the definition goes, if the language “regardless of funding source...” would be added. There was a discussion around if there is a choice on this matter and it was decided that for federal funding there is not, but on non-federal funding, they would point to an SBA number which would be \$28.48 million.
- Certain members would like certainty in the definition in the RCW, while other would like flexibility based on SBA future changes.
- The committee discussed where the cap number comes from in the regulations and where OMWBE looks to record this number currently.
- One member pointed out that these regulations are for a current program, but this committee is looking to create a new program that would be utilized across public works, across architectural and engineering services for the state level, and could preclude it from needing to play into those federal definitions that are funding specific. It was discussed that the OMWBE uses the \$28.98 million limit, which means that the two programs would have mismatched limits.
- Members discussed using “small, smaller and smallest” in the definition of small business.
  - Members previously discussed that smaller and smallest could be a percentage of small as a concept, with the percentage amount coming in future discussion.
  - Members would like to see how smaller and smallest are being used and applied before confirming the idea, however the discussion could continue.
  - One member mentioned that they would prefer to keep the thresholds simple, so they would have to see how these categories are used in application. Another member added that it would be worthwhile to know the purpose of implementation of those categories.
- One member mentioned the genesis of the numbers being used and the impact of the location of where federal funding goes, which is often the PNW states. Further, there is a layer of audit potential expectation in the background which could have an impact on projects that are funded.
- One member reminded the group of the big picture view of the report and areas of focus for the legislative writing committee, which is to get a sense from a timing standpoint of when a language suggestion would be an option. They specifically noted the importance of access to capital.

Action by: Committee  
Status: Complete

**Item 4: Next Meeting Topic: Continued – Issues Ballot: Certification of small businesses**

Action by: Committee  
Status: Approved

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

- The next meeting will be two hours long and will address certification of small businesses.

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- Voting members and guests to get back to Lori with their availability for the next meeting.

**Tracking from 9/1**

- ~~Rachel Murata will come to the meeting on 9/1 with the federal thresholds for construction and A&E services used by OMWBE, along with the numbers for how many businesses are impacted by which thresholds.~~
- 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 9/1.
- 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 9/1).

Adjourn at 4:05 pm