

MEMORANDUM

TO: CPARB
FROM: Various Stakeholders
DATE: December 4, 2018
SUBJECT: Proposed Revision to RCW 39.10.380

Summary of Proposal

RCW 39.10.380 provides the method by which an interested party, or bidding subcontractor, in a competitive bidding process utilizing the General Contractor / Construction Manager (“GC/CM”) procurement model can challenge the award or proposed public works subcontract. This statute serves as a check on the competitive bidding, public works procurement process to ensure that the rules of procurement are fair and followed and that the GC/CM on a public works project acts properly in its selection of the successful low bidder.

The proposal is to modify the current language of RCW 39.10.380 to clarify that the two-day protest period is a limitation on the GC/CM’s ability to execute a subcontract, and not a limitation on a protesting subcontractor’s ability to submit a protest outside of the two-day window. A copy of the current statute with all of the proposed language shown in redline form is attached to this memo as **Attachment A**.

Who Supports the Proposal?

This proposal is currently supported by National Utility Contractor’s Association of Washington (“NUCA”).

Why is this Proposal Necessary?

This proposal is necessary to modify RCW 39.10.380 to state that the two-day protest period is a limitation on the GC/CM’s ability to execute a subcontract, and not a limitation on a protesting subcontractor’s ability to submit a protest outside of the two-day window. This modification is necessary because RCW 39.10.380, as written, limits the time a protesting subcontractor has to submit its written protest to two days after bid opening, which is an unreasonable limitation under many circumstances. It is further necessary because a Washington Superior Court judge has interpreted this language as waiving a protesting subcontractor’s right to protest after the close of the two-day window. The modified language now mirrors the main bid protest statute, RCW 39.04.105, which a number of cases have interpreted as not creating a statute of limitations for bid protests.