

From: Frank Lemos <flemos@ldccorp.com>

Date: Thursday, November 29, 2018 at 12:28 PM

Subject: 2019 CPARB - Design Build proposed revised legislation (with inclusion language)

Dear Board Chair Schacht,

As you requested, attached are is MBACs (National Minority Business Advisory Councils) legislative revision recommendations on Design Build RCW 39.10.270 and RCW 39.10.330 (Exhibit A) for the 2019 legislative session. We have also attached legislative revisions to RCW 39.10.320 - Design-build procedure - Project management and contracting requirement (Exhibit B). These recommendations are intended to increase transparency and accountability of the certified public agencies to the public and increase fair and equitable inclusion of women, minority, veteran and small businesses.

The edited policy of RCW 39.10.270 and 39.10.330 includes the current legislative recommendations from the CPARB Design-Build Statue Review Committee (highlighted in RED) with additional edits highlighted in yellow from MBAC. It is MBACs position that CPARB as a certification body has the responsibility to ensure public agencies requesting certification or recertification are adhering to existing public contracting statutes, most importantly to our members RCW 39.19.060 (Exhibit C) which states *"to insure that minority and women-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the execution of public contracts for public works and goods and services."* The revised language provided by MBAC is also in alignment with Governor Inslee's commitment within the Results Washington Initiative (Exhibit D):

Goal 2: Prosperous Economy: Increase Utilization of state-certified Minority Owned Businesses to 10%, Women-owned businesses to 6%, and Veteran-owned businesses to 5% in overall state spend. <http://www.results.wa.gov/goals-progress/goals/prosperous-economy/goal-map>

Also attached is the 2017 Washington State AG Legal Opinion on I-200 (Exhibit E). I-200 since 1998 is often misunderstood and in nearly every case interpreted in a way to be used as a legal excuse from public agencies to do nothing about the known gross inequity in public contracting of women and minority businesses. The claim of public contracting inequity in Washington State is proven and clearly stated within the four separate legal disparity studies performed over the last six years. One in particular for the Port of Seattle. (All of which I can provide to board members on request)

We encourage every board member to be familiar with the AG legal opinion on 1-200, Results Washington, RCW 39.19.060, and RCW 39.10.230, CPARBs legal responsibility that goes with the power of oversight of alternative works certification (Exhibit F).

In addition, you will find Senate Bill SB 5631 (Exhibit G) and HB 1861 (Exhibit H) which went successfully through three committees in the house and three committees in the senate with bi-partisan support, and was brought to the floor of each body and passed in a bi-partisan manner and brought to the Governor's desk for signature. This proposed legislation spells out clearly, certified minority, women, veteran and small business for an alternative contracting process used by the University of Washington. This is attached for those board members who do not want this language specificity about certified because it is spelled out in definitions under Disadvantage. As with the UW bill, it is critical that we don't depend on agencies to clearly understand what is required by state statute when inclusion policy in contracting is suggested or required. The simple fact is, if agencies were studious and followed the laws of public contracting RCW 39.19.060 would be followed and the 2017 AG opinion on I-200 would be used with significant purpose to increase minority business participation in a meaningful way, which now is at a dismal 1% with state spending but was over 16% overall in 1997 - prior to passage I-200.

In closing, the minority business community under the current disparate inequities in public contracting can see no real benefit for public agency use of alternative works if certified public agencies continue to be allowed by this body to not report inclusion outcomes. For over four years this board has been talking about accountability of certified public agencies for inclusion and at a minimum CPARB should be requiring agencies to report their inclusion outcomes yet action on this front seems to intentionally stall. This is your opportunity to follow through with your vote of support of inclusion and as we ask for your support of the attached proposed legislative revisions to RCW 39.10.270 / 39.10.330 and RCW 39.10.320 (Exhibits A and B).

Thank you for your time and consideration.

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