

Business Equity/Diverse Business Inclusion Committee Capital Projects Advisory Review Board

22 October 2021

Committee focus:

- Comprehensive review of RCW 39.10 with the lens of equity (include RCW 39.04 & 39.80).
- Create consistency in statutory language.
- Evaluate and bring forth effective strategies and opportunities for firms to compete.

<input type="checkbox"/> Olivia Yang	Washington State University	CPARB /Committee Member
<input type="checkbox"/> Santosh Kuruville	Exeltech	CPARB /Committee Member
<input type="checkbox"/> Lisa Van der Lugt	OMWBE	CPARB /Committee Member
<input type="checkbox"/> Charles Wilson	DES	CPARB /Committee Member
<input type="checkbox"/> Irene Reyes	The Glove Lady	CPARB /Committee Member
<input type="checkbox"/> Janice Zahn	Port of Seattle	CPARB /Committee Member
<input type="checkbox"/> Jackie Bayne	WSDOT OEO	Committee Member
<input type="checkbox"/> Cheryl Stewart	Inland Northwest AGC	Committee Member
<input type="checkbox"/> Chip Tull	Hoffman Construction	Committee Member
<input type="checkbox"/> Aleanna Kondelis	Akana	Committee Member
<input type="checkbox"/> Brenda Nnambi	Sound Transit	Committee Member
<input type="checkbox"/> Linda Womack	MBDA	Committee Member
<input type="checkbox"/> Cathy Robinson	City of Lynnwood	Committee Member
<input type="checkbox"/> Shelly Henderson	Mukilteo School District	Committee Member
<input type="checkbox"/> Keith Michel	Forma	Committee Member
<input type="checkbox"/> Young Sang Song	Song Consulting	Committee Member
<input type="checkbox"/> Stephanie Caldwell	Absher Construction	Committee Member
<input type="checkbox"/> Bill Dobyms	Lydig	CPARB
<input type="checkbox"/> Bobby Forch	Forch Consulting	CPARB
<input type="checkbox"/> Lily Keefe	USDOT - Northwest SBTRC	
<input type="checkbox"/> Sarah Erdman	OMWBE	
<input type="checkbox"/> Van Collins	ACEC Washington	
<input type="checkbox"/> Cathy Ridley	Exeltech	
<input type="checkbox"/> Maja Huff	Washington State University	
<input type="checkbox"/> Jerry Vanderwood	AGC of Washington	
<input type="checkbox"/> Timolin Abrom	OMWBE	
<input type="checkbox"/> Melissa Van Gorkom	Senate Committee Services	
<input type="checkbox"/> Amy Stenvall		
<input type="checkbox"/> Cindy Magruder	University of Washington	
<input type="checkbox"/> Carrie Whitton	Forma	

DRAFT AGENDA

Item	Purpose	Start
Welcome and committee member introductions	Information	10:00 am
Review & approve agenda	Action	10:05 am
Review & approve 9/24/21 meeting minutes	Action	10:10 am
Invitation to the public to participate	-	10:15 am
Dashboard	Discussion	10:20 am
Follow up from CPARB Meeting	Discussion	10:35 am
SWR	Discussion	10:50 am
Next Steps	Discussion	11:30 am
"Final word" (from committee members)	Discussion	11:40 am
Adjourn	Action	12:00 pm

DIGITAL CONFERENCE ACCESS

The committee meeting will be conducted entirely by Zoom digital conferencing.

Online <https://wsu.zoom.us/j/97615048848>

Meeting ID: 976 1504 8848

Join by telephone

Dial: US: +1 253 215 8782 or +1 669 900 9128 or +1 646 558 8656

Meeting ID: 976 1504 8848

Olivia Yang - Washington State University

206 718 0787 olivia.yang@wsu.edu

Santosh Kuruvilla – Exeltech Consulting

206 713 1241 santosh@xltech.com

<p>Bid Shopping and or bid n switch (14)</p>	<p>During bid/solicitation phases, firms are counted and asked to provide work and contribution then upon award of contract prime seeks other firms, rebids, claims pricing issues, etc. This same favor or issue occur in professional services teaming agreements.</p>	<p>Special Investigative Team to be Created with Attorney assistance, there is a compliance audit available and paid by owner. As activities like this happen - we must get to the bottom of it and start calling out individuals and not companies. Use a big hammer with this one. Again accountability measurements and consequences like penalties. (BP Responder: are there any examples that we know of that can be researched?)</p>	<p>Olivia/Van</p>				
<p>Scoring and details (4)</p>	<p>Scoring not consistent with solicitations and appear as if the "Tweezer" was picked because submissions do not meet scoring. Often details offered are not helpful or provide real guidance on how to improve.</p>	<p>RFP has to have more stringent requirements and language - use words like requirement not goal. Give this department more points/value. More value must be assigned or the primes will not take it seriously. (BP Responder: do you know of any examples RFPs that have been well written so we can make sure to include as examples/templates?)</p>	<p>DES (?)</p>				
Section 4: Monitoring, Reporting, Tracking							
<p>Data Collection Systems (5)</p>	<p>No one is centrally collecting inclusion data, if collected it is not consistent and/or accessible to the public.</p>	<p>BP question to ES: is there an option or story to share on inclusion data collection?</p>	<p>Akanna/Brenda</p>	<p>X X X X X X X</p>		<p>Standardizing tools in the market place, efforts funded in COWIE for state agencies.</p>	
<p>Enforcement (5)</p>	<p>Diverse firms are often invited to "tear" or named in inclusion plan then as the project proceeds agreements are not honored or inclusion plans are not followed. (This is contract enforcement, owner training, legal requirements, etc.)</p>	<p>Special Investigative Team to be Created with Attorney assistance, there is a compliance audit available and paid by owner. As activities like this happen - we must get to the bottom of it and start calling out individuals and not companies. Use a big hammer with this one. Again accountability measurements and consequences like penalties.</p>	<p>Olivia/Van</p>	<p>X</p>	<p>Substitution requirements should extend to teaming agreements and A/E environments; evidence must be provided to remove or substitute subs and subcontractors; termination should be part of the enforcement escalation for violating contract terms or aspects of bid/proposal. This should be material breach. (e.g. Federal, WSDOT, City of Seattle)</p>	<p>Some owners do have contract enforcement and compliance team deployed.</p>	
<p>Contractor Performance/Evaluation Programs (5)</p>	<p>For Inclusion Plans to be material to award and contracting, there must be evaluation and enforcement programs with scoring and/or consequence to not making the grade (Bobby Farth: influencing the tipping point of culture)</p>	<p>For Inclusion Plans to be material to award and contracting, there must be evaluation and enforcement programs with scoring and/or consequence to not making the grade (Bobby Farth: influencing the tipping point of culture)</p>	<p>Olivia/Van</p>	<p>X</p>	<p>(e.g. Federal, City of Seattle, LW all have some sort of contractor performance program)</p>		
<p>Reporting Type</p>	<p>No one standard reporting format, if information is reported the public cannot compare or understand. We might get better at data collection if there were samples and example required forms, etc. Primes should follow standards.</p>	<p>we are looking forward to this</p>	<p>Keith/Caris</p>		<p>samples and examples</p>		
<p>Business Growth Monitoring (8)</p>	<p>No metrics or reporting to understand if inclusion practices are working and diverse businesses are growing. We need to know that the "best practices" are working.</p>	<p>What are we going to do with that information? Should we spend the money and time if we don't know how we are going to use the data? Use this form as a great marketing/promotional tool show support material.</p>	<p>BDEI Committee</p>				
<p>Data Collection Processes</p>	<p>Owners and primes have no internal controls, consistency or practices for collecting inclusion data.</p>	<p>Recommendation that owner's wanting to use alternative public works and/or be certified to use the tools should show internal controls and increasing evidence of diverse business inclusion in their capital portfolio. Not just a simple statement.</p>	<p>Akanna/Brenda</p>	<p>X X X X X X X</p>	<p>See other similar topics, suggesting a central repository as a condition of funding</p>		
<p>CPAB PRC Application</p>			<p>Akanna (PRCT)</p>				
Section 5: Planning ("Start early")							
<p>Women-owned firm equity (3)</p>	<p>Women/ethnicity-owned firms are less likely to receive awards over their white and male counterparts.</p>	<p>What is the committee's end goal? Share the information or are looking to boost WBE's revenue? Devices should be part of the RFP - put it in writing.</p>	<p>Examples: Port of Seattle, Sound Transit, City of Seattle</p>				
<p>Workplace Safety (anti-harassment, violence) (3)</p>	<p>Employees of color and women often are victims of violence, harassment, hazing, and other forms of inappropriate treatment</p>	<p>From topic: This is 200% true: I had to appear in King County Court as a Walsh Area Manager to protect AP can direct labor force from assaults in Seattle. Long story short and 15K later - a resident near the project was put under a special bonded separation order enforced by SPD.</p>	<p>City of Seattle (?)</p>		<p>(This may overlap with project labor agreements and community workforce agreements, site safety, enforcement, etc.) Exemplar: City of Seattle</p>		
<p>Retaliation and Restriction (4)</p>	<p>When complaints are filed regarding bid processes, etc. businesses that complained feel like they are "back-bited" or ignored and labeled as a nuisance, left out of processes...or much worse.</p>	<p>No experience, no comment. (BP Responder: this topic was presented by a diverse business that shared a personal experience, can external stakeholders please try to find out more information and stories?)</p>	<p>Federal processes, federal laws</p>				

Kellen Wright 360-786-7134
House Committee on Local Government
September 17, 2021 (8:45 AM)

1 AN ACT Relating to public works contracting;
2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4
5 **Sec. 1.** RCW 53.08.120 and 2018 c 149 s 2 are each amended to
6 read as follows:

7 (1) All material and work required by a port district not
8 meeting the definition of public work in RCW 39.04.010(4) may be
9 procured in the open market or by contract and all work ordered may
10 be done by contract or day labor.

11 (2) (a) All such contracts for work meeting the definition of
12 "public work" in RCW 39.04.010(4), the estimated cost of which
13 exceeds (~~three hundred thousand dollars~~) the cost thresholds
14 established in RCW 39.04.155, shall be awarded using a competitive
15 bid process. The contract must be awarded at public bidding upon
16 notice published in a newspaper of general circulation in the
17 district at least thirteen days before the last date upon which bids
18 will be received, calling for bids upon the work, plans and
19 specifications for which shall then be on file in the office of the

Draft

p.1

Commented [WK1]: This is aligning port districts with the general small works roster statute.

1 commission for public inspection. The same notice may call for bids
2 on such work or material based upon plans and specifications
3 submitted by the bidder. The competitive bidding requirements for
4 purchases or public works may be waived pursuant to RCW 39.04.280 if
5 an exemption contained within that section applies to the purchase
6 or public work.

7 (b) For all contracts related to work meeting the definition of
8 "public work" in RCW 39.04.010(4), ~~((that are estimated at three~~
9 ~~hundred thousand dollars or less))~~ the estimated cost of which do
10 not exceed the cost thresholds established in RCW 39.04.155, a port
11 district may let contracts using the small works roster process
12 under RCW 39.04.155 in lieu of advertising for bids. Whenever
13 possible, the managing official shall invite at least one proposal
14 from a minority contractor who shall otherwise qualify under this
15 section.

16 When awarding such a contract for work, when utilizing proposals
17 from the small works roster, the managing official shall give weight
18 to the contractor submitting the lowest and best proposal, and
19 whenever it would not violate the public interest, such contracts
20 shall be distributed equally among contractors, including minority
21 contractors, on the small works roster.

22 (c) Any port district may construct any public work, as defined
23 in RCW 39.04.010, by contract without calling for bids whenever the
24 estimated cost of the work or improvement, including cost of
25 materials, supplies, and equipment, will not exceed the sum of forty
26 thousand dollars. A "public works project" means a complete project.
27 The restrictions in this subsection do not permit the division of
28 the project into units of work or classes of work to avoid calling
29 for bids. The port district managing official shall make his or her
30 best effort to reach out to qualified contractors, including
31 certified minority and woman-owned contractors.

32 (3) (a) A port district may procure public works with a unit
33 priced contract under this section or RCW 39.04.010(2) for the
34

1 purpose of completing anticipated types of work based on hourly
2 rates or unit pricing for one or more categories of work or trades.

3 (b) For the purposes of this section, unit priced contract means
4 a competitively bid contract in which public works are anticipated
5 on a recurring basis to meet the business or operational needs of a
6 port district, under which the contractor agrees to a fixed period
7 indefinite quantity delivery of work, at a defined unit price, for
8 each category of work.

9 (c) Unit priced contracts must be executed for an initial
10 contract term not to exceed three years, with the port district
11 having the option of extending or renewing the unit priced contract
12 for one additional year.

13 (d) Invitations for unit priced bids shall include, for purposes
14 of the bid evaluation, estimated quantities of the anticipated types
15 of work or trades, and specify how the port district will issue or
16 release work assignments, work orders, or task authorizations
17 pursuant to a unit priced contract for projects, tasks, or other
18 work based on the hourly rates or unit prices bid by the contractor.
19 Contracts must be awarded to the lowest responsible bidder as per
20 RCW 39.04.010. Whenever possible, the port district must invite at
21 least one proposal from a minority or woman contractor who otherwise
22 qualifies under this section.

23 (e) Unit priced contractors shall pay prevailing wages for all
24 work that would otherwise be subject to the requirements of chapter
25 39.12 RCW. Prevailing wages for all work performed pursuant to each
26 work order must be the prevailing wage rates in effect at the
27 beginning date for each contract year. Unit priced contracts shall
28 have prevailing wage rates updated annually. Intents and affidavits
29 for prevailing wages paid shall be submitted annually for all work
30 completed within the previous twelve-month period of the unit priced
31 contract.

32
33 **Sec. 2.** RCW 87.03.436 and 2010 c 201 s 2 are each amended to
34 read as follows:

Commented [WK2]: This section is aligning irrigation districts with the general small works roster statute.

1 All contract projects, the estimated cost of which is less than
2 (~~three hundred thousand dollars~~) the cost thresholds established
3 in RCW 39.04.155, may be awarded using the small works roster
4 process under RCW 39.04.155.

5

6 **Sec. 3.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Award" means the formal decision by the state or
11 municipality notifying a responsible bidder with the lowest
12 responsive bid of the state's or municipality's acceptance of the
13 bid and intent to enter into a contract with the bidder.

14 (2) "Contract" means a contract in writing for the execution of
15 public work for a fixed or determinable amount duly awarded after
16 advertisement and competitive bid, or a contract awarded under the
17 small works roster process in RCW 39.04.155.

18 (3) "Municipality" means every city, county, town, port
19 district, district, or other public agency authorized by law to
20 require the execution of public work, except drainage districts,
21 diking districts, diking and drainage improvement districts,
22 drainage improvement districts, diking improvement districts,
23 consolidated diking and drainage improvement districts, consolidated
24 drainage improvement districts, consolidated diking improvement
25 districts, irrigation districts, or other districts authorized by
26 law for the reclamation or development of waste or undeveloped
27 lands.

28 (4) "Public work" means all work, construction, alteration,
29 repair, or improvement other than ordinary maintenance, executed at
30 the cost of the state or of any municipality, or which is by law a
31 lien or charge on any property therein. All public works, including
32 maintenance when performed by contract shall comply with chapter
33 39.12 RCW. "Public work" does not include work, construction,
34 alteration, repair, or improvement performed under contracts entered

1 into under RCW 36.102.060(4) or under development agreements entered
2 into under RCW 36.102.060(7) or leases entered into under RCW
3 36.102.060(8).

4 (5) "Responsible bidder" means a contractor who meets the
5 criteria in RCW 39.04.350.

6 (6) "Small business" means an in-state business, including a
7 sole proprietorship, corporation, partnership, or other legal
8 entity, that:

Commented [WK3]: This is the small business definition that CPARB recommended adding.

9 (a) Certifies, under penalty of perjury, that it is owned and
10 operated independently from all other businesses and has either:

11 (i) Fifty or fewer employees; or

12 (ii) A gross revenue of less than seven million dollars annually
13 as reported on its federal income tax return or its return filed
14 with the department of revenue over the previous three consecutive
15 years; or

16 (b) Is certified with the office of women and minority business
17 enterprises under chapter 39.19 RCW.

18 (7) "State" means the state of Washington and all departments,
19 supervisors, commissioners, and agencies of the state.

20

21 **Sec. 4.** RCW 39.04.155 and 2019 c 434 s 5 are each amended to
22 read as follows:

23 (1) This section provides uniform small works roster provisions
24 to award contracts for construction, building, renovation,
25 remodeling, alteration, repair, or improvement of real property that
26 may be used by state agencies and by any local government that is
27 expressly authorized to use these provisions. These provisions may
28 be used in lieu of other procedures to award contracts for such work
29 with an estimated cost of three hundred fifty thousand dollars or
30 less or the estimated cost is less than the threshold determined by
31 the office of financial management pursuant to subsection (7) of
32 this section, whichever amount is greater. The small works roster
33 process includes the limited public works process authorized under
34 subsection (3) of this section and any local government

1 ((~~authorized~~)) to award contracts using the small works roster
2 process under this section may award contracts using the limited
3 public works process under subsection (3) of this section.

4 (2) (a) A state agency or authorized local government may create
5 a single general small works roster, or may create a small works
6 roster for different specialties or categories of anticipated work.
7 Where applicable, small works rosters may make distinctions between
8 contractors based upon different geographic areas served by the
9 contractor. The small works roster or rosters shall consist of all
10 responsible contractors who have requested to be on the list, and
11 where required by law are properly licensed or registered to perform
12 such work in this state. A state agency or local government
13 establishing a small works roster or rosters may require eligible
14 contractors desiring to be placed on a roster or rosters to keep
15 current records of any applicable licenses, certifications,
16 registrations, bonding, insurance, or other appropriate matters on
17 file with the state agency or local government as a condition of
18 being placed on a roster or rosters. At least once a year, the state
19 agency or local government shall publish in a newspaper of general
20 circulation within the jurisdiction a notice of the existence of the
21 roster or rosters and solicit the names of contractors for such
22 roster or rosters. In addition, responsible contractors shall be
23 added to an appropriate roster or rosters at any time they submit a
24 written request and necessary records. Master contracts may be
25 required to be signed that become effective when a specific award is
26 made using a small works roster.

27 (b) A state agency establishing a small works roster or rosters
28 shall adopt rules implementing this subsection. A local government
29 establishing a small works roster or rosters shall adopt an
30 ordinance or resolution implementing this subsection. Procedures
31 included in rules adopted by the department of enterprise services
32 in implementing this subsection must be included in any rules
33 providing for a small works roster or rosters that is adopted by
34 another state agency, if the authority for that state agency to

1 engage in these activities has been delegated to it by the
2 department of enterprise services under chapter 43.19 RCW. An
3 interlocal contract or agreement between two or more state agencies
4 or local governments establishing a small works roster or rosters to
5 be used by the parties to the agreement or contract must clearly
6 identify the lead entity that is responsible for implementing the
7 provisions of this subsection.

8 (c) Procedures shall be established for securing telephone,
9 written, or electronic quotations from contractors on the
10 appropriate small works roster to assure that a competitive price is
11 established and to award contracts to the lowest responsible bidder,
12 as defined in RCW 39.04.010. Invitations for quotations shall
13 include an estimate of the scope and nature of the work to be
14 performed as well as materials and equipment to be furnished.
15 However, detailed plans and specifications need not be included in
16 the invitation. This subsection does not eliminate other
17 requirements for architectural or engineering approvals as to
18 quality and compliance with building codes. Quotations may be
19 invited from all appropriate contractors on the appropriate small
20 works roster. As an alternative, quotations may be invited from at
21 least five contractors on the appropriate small works roster,
22 including at least two small businesses as defined in RCW 39.26.010
23 or women and minority owned businesses certified by the office of
24 minority and women's business enterprises, who have indicated the
25 capability of performing the kind of work being contracted, in a
26 manner that will equitably distribute the opportunity among the
27 contractors on the appropriate roster. However, if the estimated
28 cost of the work is from two hundred fifty thousand dollars to three
29 hundred fifty thousand dollars, or between the cost thresholds
30 determined by the office of financial management pursuant to
31 subsection (7) of this section, a state agency or local government
32 that chooses to solicit bids from less than all the appropriate
33 contractors on the appropriate small works roster must also notify
34 the remaining contractors on the appropriate small works roster that

Commented [WK4]: Notification requirement for at least two small businesses/MWBE-certified firms.

1 quotations on the work are being sought. The government has the sole
2 option of determining whether this notice to the remaining
3 contractors is made by: (i) Publishing notice in a legal newspaper
4 in general circulation in the area where the work is to be done;
5 (ii) mailing a notice to these contractors; or (iii) sending a
6 notice to these contractors by facsimile or other electronic means.
7 For purposes of this subsection (2)(c), "equitably distribute" means
8 that a state agency or local government soliciting bids may not
9 favor certain contractors on the appropriate small works roster over
10 other contractors on the appropriate small works roster who perform
11 similar services. Additionally, the solicitation of bids provided
12 pursuant to this subsection 2(c) must rotate through the contractors
13 on the appropriate small works roster and must, when qualified
14 contractors are available from the roster who may perform the work
15 or deliver the services within the budget described in the notice or
16 request for proposals, utilize different contractors on different
17 projects and ensure that no contractor receives more than twenty
18 percent of the total contracts let by the agency or local government
19 that utilize the small works roster.

20 (d) A contract awarded from a small works roster under this
21 section need not be advertised.

22 (e) Immediately after an award is made, the bid quotations
23 obtained shall be recorded, open to public inspection, and available
24 by at least one of the following: Telephone or electronic request.

25 (f) For projects awarded under the small works roster process
26 established under this subsection, a state agency or authorized
27 local government may waive the retainage requirements of RCW
28 60.28.011(1)(a), thereby assuming the liability for contractor's
29 nonpayment of: (i) Laborers, mechanics, subcontractors,
30 materialpersons, and suppliers; and (ii) taxes, increases, and
31 penalties under Titles 50, 51, and 82 RCW that may be due from the
32 contractor for the project. However, the state agency or local
33 government has the right of recovery against the contractor for any
34 payments made on the contractor's behalf. Recovery of unpaid wages

Commented [WK5]: This section would try to increase the rotation among contractors (when there are qualified contractors available).

1 and benefits are the first priority for actions filed against the
2 contract.

3 (3) (a) In lieu of awarding contracts under subsection (2) of
4 this section, a state agency or authorized local government may
5 award a contract for work, construction, alteration, repair, or
6 improvement projects estimated to cost less than fifty thousand
7 dollars or less than the threshold determined by the office of
8 financial management pursuant to subsection (7) of this section,
9 whichever amount is greater, using the limited public works process
10 provided under this subsection. Public works projects awarded under
11 this subsection are exempt from the other requirements of the small
12 works roster process provided under subsection (2) of this section
13 and are exempt from the requirement that contracts be awarded after
14 advertisement as provided under RCW 39.04.010.

15 (b) For limited public works projects, a state agency or
16 authorized local government shall solicit electronic or written
17 quotations from a minimum of three contractors from the appropriate
18 small works roster and shall award the contract to the lowest
19 responsible bidder as defined under RCW 39.04.010. After an award is
20 made, the quotations shall be open to public inspection and
21 available by electronic request. A state agency or authorized local
22 government must equitably distribute opportunities for limited
23 public works projects among contractors willing to perform in the
24 geographic area of the work. A state agency or authorized local
25 government shall maintain a list of the contractors contacted and
26 the contracts awarded during the previous twenty-four months under
27 the limited public works process, including the name of the
28 contractor, the contractor's registration number, the amount of the
29 contract, a brief description of the type of work performed, and the
30 date the contract was awarded. For limited public works projects, a
31 state agency or authorized local government may waive the payment
32 and performance bond requirements of chapter 39.08 RCW and may waive
33 the retainage requirements of RCW 60.28.011(1) (a), thereby assuming
34 the liability for the contractor's nonpayment of laborers,

1 mechanics, subcontractors, material persons, suppliers, and taxes,
2 increases, and penalties imposed under Titles 50, 51, and 82 RCW
3 that may be due from the contractor for the limited public works
4 project, however the state agency or authorized local government
5 shall have the right of recovery against the contractor for any
6 payments made on the contractor's behalf.

7 (4) The breaking of any project into units or accomplishing any
8 projects by phases is prohibited if it is done for the purpose of
9 avoiding the maximum dollar amount of a contract that may be let
10 using the small works roster process or limited public works
11 process.

12 (5) A state agency or authorized local government may use the
13 limited public works process in this section to solicit and award
14 small works roster contracts to minibusinesses and microbusinesses
15 as defined under RCW 39.26.010 that are registered contractors.

16 (6) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Equitably distribute opportunities" means that a state
19 agency or authorized local government may not favor certain
20 contractors on the appropriate small works roster over other
21 contractors on the same roster who perform similar services, must
22 rotate through the contractors on the appropriate small works
23 roster, and must, when qualified contractors are available from the
24 roster who may perform the work or deliver the services within the
25 budget described in the notice or request for proposals, utilize
26 different contractors on different projects and ensure that no
27 contractor receives more than twenty percent of the total contracts
28 let by the agency or local government that utilize the small works
29 roster.

30 (b) "State agency" means the department of enterprise services,
31 the state parks and recreation commission, the department of natural
32 resources, the department of fish and wildlife, the department of
33 transportation, any institution of higher education as defined under
34 RCW 28B.10.016, and any other state agency delegated authority by

1 the department of enterprise services to engage in construction,
2 building, renovation, remodeling, alteration, improvement, or repair
3 activities.

4 (7) The dollar thresholds established in subsections (1),
5 (2) (c), and (3) (a) this section must be adjusted for inflation by
6 the office of financial management every five years based upon
7 changes in the building cost index during that time period.
8 "Building cost index" means the building cost index for Seattle,
9 Washington, compiled by engineering news record, a nationally
10 recognized professional construction trade periodical. The building
11 cost index uses average skilled construction labor rates, structural
12 steel, concrete, and lumber as the basis of measurement. The office
13 of financial management must calculate the new dollar threshold and
14 transmit it to the office of the code reviser for publication in the
15 Washington State Register by December 1, 2023, and every five years
16 thereafter, and any change shall not take effect before the end of
17 the regular legislative session in the next year.

Commented [WK6]: This is an automatic increase in the thresholds based on inflation. OFM would have to provide the new threshold by December 1 every five years, and the new threshold would not go into effect until after the legislative session (in case the legislature wanted to make any changes).

18
19
20 **Sec. 5.** RCW 39.08.010 and 2017 c 75 s 1 are each amended to
21 read as follows:

22 (1) (a) Whenever any board, council, commission, trustees, or
23 body acting for the state or any county or municipality or any
24 public body must contract with any person or corporation to do any
25 work for the state, county, or municipality, or other public body,
26 city, town, or district, such board, council, commission, trustees,
27 or body must require the person or persons with whom such contract
28 is made to make, execute, and deliver to such board, council,
29 commission, trustees, or body a good and sufficient bond, with a
30 surety company as surety, conditioned that such person or persons
31 must:

- 32 (i) Faithfully perform all the provisions of such contract;
33 (ii) Pay all laborers, mechanics, and subcontractors and
34 material suppliers, and all persons who supply such person or

1 persons, or subcontractors, with provisions and supplies for the
2 carrying on of such work; and

3 (iii) Pay the taxes, increases, and penalties incurred on the
4 project under Titles 50, 51, and 82 RCW on: (A) Projects referred to
5 in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is
6 conditioned on the payment of such taxes, increases, and penalties.

7 (b) The bond, in cases of cities and towns, must be filed with
8 the clerk or comptroller thereof, and any person or persons
9 performing such services or furnishing material to any subcontractor
10 has the same right under the provisions of such bond as if such
11 work, services, or material was furnished to the original
12 contractor.

13 (2) The provisions of RCW 39.08.010 through 39.08.030 do not
14 apply to any money loaned or advanced to any such contractor,
15 subcontractor, or other person in the performance of any such work.

16 (3) On contracts of one hundred fifty thousand dollars or less,
17 at the option of the contractor or the general
18 contractor/construction manager as defined in RCW 39.10.210, the
19 respective public entity may, in lieu of the bond, retain ten
20 percent of the contract amount for a period of thirty days after
21 date of final acceptance, or until receipt of all necessary releases
22 from the department of revenue, the employment security department,
23 and the department of labor and industries and settlement of any
24 liens filed under chapter 60.28 RCW, whichever is later. The
25 recovery of unpaid wages and benefits must be the first priority for
26 any actions filed against retainage held by a state agency or
27 authorized local government.

28 (4) For contracts of one hundred fifty thousand dollars or less,
29 the public entity may accept a full payment and performance bond
30 from an individual surety or sureties.

31 (5) The surety must agree to be bound by the laws of the state
32 of Washington and subjected to the jurisdiction of the state of
33 Washington.

34

1 (6) (a) This requirements of this section do not apply to
2 contracts of less than ten thousand dollars or the amount determined
3 by the office of financial management as provided in (b) of this
4 subsection, whichever amount is greater.

5 (b) From a baseline of ten thousand dollars on January 1, 2022,
6 the office of financial management must adjust the threshold in this
7 subsection every five years, beginning January 1, 2024, based on
8 inflation. The inflation determination shall be based upon changes
9 in the building cost index during that time period. "Building cost
10 index" means the building cost index for Seattle, Washington,
11 compiled by engineering news record, a nationally recognized
12 professional construction trade periodical. The building cost index
13 uses average skilled construction labor rates, structural steel,
14 concrete, and lumber as the basis of measurement. The resulting
15 amount shall be rounded to the nearest thousand dollars. The office
16 of financial management must calculate the new dollar threshold and
17 transmit it to the office of the code reviser for publication in the
18 Washington State Register at least one month before the new dollar
19 threshold is to take effect.

Commented [WK7]: Exemption from performance bond requirements of contracts of less than \$10,000 and an automatic increase to the nearest thousand dollars based on inflation. This can be changed to match the increase mechanism in Section 7 if desired.

20
21
22 **Sec. 6.** RCW 60.28.011 and 2017 c 302 s 1 are each amended to
23 read as follows:

24 (1) (a) Except as provided in (b) of this subsection or in
25 subsection (13) of this section, public improvement contracts must
26 provide, and public bodies must reserve, a contract retainage not to
27 exceed five percent of the moneys earned by the contractor as a
28 trust fund for the protection and payment of: (i) The claims of any
29 person arising under the contract; and (ii) the state with respect
30 to taxes, increases, and penalties imposed pursuant to Titles 50,
31 51, and 82 RCW which may be due from such contractor.

32 (b) Public improvement contracts funded in whole or in part by
33 federal transportation funds must rely upon the contract bond as
34 referred to in chapter 39.08 RCW for the protection and payment of:

1 (i) The claims of any person or persons arising under the contract
2 to the extent such claims are provided for in RCW 39.08.010; and
3 (ii) the state with respect to taxes, increases, and penalties
4 incurred on the public improvement project under Titles 50, 51, and
5 82 RCW which may be due. The contract bond must remain in full force
6 and effect until, at a minimum, all claims filed in compliance with
7 chapter 39.08 RCW are resolved.

8 (2) Every person performing labor or furnishing supplies toward
9 the completion of a public improvement contract has a lien upon
10 moneys reserved by a public body under the provisions of a public
11 improvement contract. However, the notice of the lien of the
12 claimant must be given within forty-five days of completion of the
13 contract work, and in the manner provided in RCW 39.08.030.

14 (3) The contractor at any time may request the contract
15 retainage be reduced to one hundred percent of the value of the work
16 remaining on the project.

17 (a) After completion of all contract work other than
18 landscaping, the contractor may request that the public body release
19 and pay in full the amounts retained during the performance of the
20 contract, and sixty days thereafter the public body must release and
21 pay in full the amounts retained (other than continuing retention of
22 five percent of the moneys earned for landscaping) subject to the
23 provisions of chapter 39.12 RCW and this chapter.

24 (b) Sixty days after completion of all contract work the public
25 body must release and pay in full the amounts retained during the
26 performance of the contract subject to the provisions of chapter
27 39.12 RCW and this chapter.

28 (4) The moneys reserved by a public body under the provisions of
29 a public improvement contract, at the option of the contractor, must
30 be:

31 (a) Retained in a fund by the public body;

32 (b) Deposited by the public body in an interest bearing account
33 in a bank, mutual savings bank, or savings and loan association.

34

1 Interest on moneys reserved by a public body under the provision of
2 a public improvement contract must be paid to the contractor;

3 (c) Placed in escrow with a bank or trust company by the public
4 body. When the moneys reserved are placed in escrow, the public body
5 must issue a check representing the sum of the moneys reserved
6 payable to the bank or trust company and the contractor jointly.
7 This check must be converted into bonds and securities chosen by the
8 contractor and approved by the public body and the bonds and
9 securities must be held in escrow. Interest on the bonds and
10 securities must be paid to the contractor as the interest accrues.

11 (5) The contractor or subcontractor may withhold payment of not
12 more than five percent from the moneys earned by any subcontractor
13 or sub-subcontractor or supplier contracted with by the contractor
14 to provide labor, materials, or equipment to the public project.
15 Whenever the contractor or subcontractor reserves funds earned by a
16 subcontractor or sub-subcontractor or supplier, the contractor or
17 subcontractor must pay interest to the subcontractor or sub-
18 subcontractor or supplier at a rate equal to that received by the
19 contractor or subcontractor from reserved funds.

20 (6) A contractor may submit a bond for all or any portion of the
21 contract retainage in a form acceptable to the public body and from
22 an authorized surety insurer. The public body may require that the
23 authorized surety have a minimum A.M. Best financial strength rating
24 so long as that minimum rating does not exceed A-. The public body
25 must comply with the provisions of RCW 48.28.010. At any time prior
26 to final formal acceptance of the project, a subcontractor may
27 request the contractor to submit a bond to the public owner for that
28 portion of the contractor's retainage pertaining to the
29 subcontractor in a form acceptable to the public body and from a
30 bonding company meeting standards established by the public body.
31 The contractor may withhold the subcontractor's portion of the bond
32 premium. Within thirty days of receipt of the request, the
33 contractor shall provide and the public body shall accept a bond
34 meeting these requirements unless the public body can demonstrate

1 good cause for refusing to accept it, the bond is not commercially
2 available, or the subcontractor refuses to pay the subcontractor's
3 portion of the bond premium and to provide the contractor with a
4 like bond. The contractor's bond and any proceeds therefrom are
5 subject to all claims and liens and in the same manner and priority
6 as set forth for retained percentages in this chapter. The public
7 body must release the bonded portion of the retained funds to the
8 contractor within thirty days of accepting the bond from the
9 contractor. Whenever a public body accepts a bond in lieu of
10 retained funds from a contractor, the contractor must accept like
11 bonds from any subcontractors or suppliers from which the contractor
12 has retained funds. The contractor must then release the funds
13 retained from the subcontractor or supplier to the subcontractor or
14 supplier within thirty days of accepting the bond from the
15 subcontractor or supplier.

16 (7) If the public body administering a contract, after a
17 substantial portion of the work has been completed, finds that an
18 unreasonable delay will occur in the completion of the remaining
19 portion of the contract for any reason not the result of a breach
20 thereof, it may, if the contractor agrees, delete from the contract
21 the remaining work and accept as final the improvement at the stage
22 of completion then attained and make payment in proportion to the
23 amount of the work accomplished and in this case any amounts
24 retained and accumulated under this section must be held for a
25 period of sixty days following the completion. In the event that the
26 work is terminated before final completion as provided in this
27 section, the public body may thereafter enter into a new contract
28 with the same contractor to perform the remaining work or
29 improvement for an amount equal to or less than the cost of the
30 remaining work as was provided for in the original contract without
31 advertisement or bid. The provisions of this chapter are exclusive
32 and supersede all provisions and regulations in conflict herewith.

33 (8) Whenever the department of transportation has contracted for
34 the construction of two or more ferry vessels, sixty days after

1 completion of all contract work on each ferry vessel, the department
2 must release and pay in full the amounts retained in connection with
3 the construction of the vessel subject to the provisions of RCW
4 60.28.021 and chapter 39.12 RCW. However, the department of
5 transportation may at its discretion condition the release of funds
6 retained in connection with the completed ferry upon the contractor
7 delivering a good and sufficient bond with two or more sureties, or
8 with a surety company, in the amount of the retained funds to be
9 released to the contractor, conditioned that no taxes may be
10 certified or claims filed for work on the ferry after a period of
11 sixty days following completion of the ferry; and if taxes are
12 certified or claims filed, recovery may be had on the bond by the
13 department of revenue, the employment security department, the
14 department of labor and industries, and the material suppliers and
15 laborers filing claims.

16 (9) Except as provided in subsection (1) of this section,
17 reservation by a public body for any purpose from the moneys earned
18 by a contractor by fulfilling its responsibilities under public
19 improvement contracts is prohibited.

20 (10) Contracts on projects funded in whole or in part by farmers
21 home administration and subject to farmers home administration
22 regulations are not subject to subsections (1) through (9) of this
23 section.

24 (11) This subsection applies only to a public body that has
25 contracted for the construction of a facility using the general
26 contractor/construction manager procedure, as defined under RCW
27 39.10.210. If the work performed by a subcontractor on the project
28 has been completed within the first half of the time provided in the
29 general contractor/construction manager contract for completing the
30 work, the public body may accept the completion of the subcontract.
31 The public body must give public notice of this acceptance. After a
32 forty-five day period for giving notice of liens, and compliance
33 with the retainage release procedures in RCW 60.28.021, the public
34 body may release that portion of the retained funds associated with

1 the subcontract. Claims against the retained funds after the forty-
2 five day period are not valid.

3 (12) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Contract retainage" means an amount reserved by a public
6 body from the moneys earned by a person under a public improvement
7 contract.

8 (b) "Person" means a person or persons, mechanic, subcontractor,
9 or materialperson who performs labor or provides materials for a
10 public improvement contract, and any other person who supplies the
11 person with provisions or supplies for the carrying on of a public
12 improvement contract.

13 (c) "Public body" means the state, or a county, city, town,
14 district, board, or other public body.

15 (d) "Public improvement contract" means a contract for public
16 improvements or work, other than for professional services, or a
17 work order as defined in RCW 39.10.210.

18 (13) (a) The requirements of this section do not apply to
19 contracts of less than ten thousand dollars or the amount determined
20 by the office of financial management as provided in (b) of this
21 subsection, whichever amount is greater.

22 (b) From a baseline of ten thousand dollars on January 1, 2022,
23 the office of financial management must adjust the threshold in this
24 subsection every five years, beginning January 1, 2024, based on
25 inflation. The inflation determination shall be based upon changes
26 in the building cost index during that time period. "Building cost
27 index" means the building cost index for Seattle, Washington,
28 compiled by engineering news record, a nationally recognized
29 professional construction trade periodical. The building cost index
30 uses average skilled construction labor rates, structural steel,
31 concrete, and lumber as the basis of measurement. The resulting
32 amount shall be rounded to the nearest thousand dollars. The office
33 of financial management must calculate the new dollar threshold and
34 transmit it to the office of the code reviser for publication in the

1 Washington State Register at least one month before the new dollar
2 threshold is to take effect.

Commented [WK8]: Exemption from retainage requirements of contracts of less than \$10,000 and an automatic increase to the nearest thousand dollars based on inflation.

3
4 **Sec. 7.** RCW 39.19.120 and 1987 c 328 s 7 are each amended to
5 read as follows:

6 The office shall be the sole authority to perform certification
7 of minority business enterprises, socially and economically
8 disadvantaged business enterprises, and women's business enterprises
9 throughout the state of Washington. (~~Certification by the state~~
10 ~~office will allow~~) Such certification shall be sufficient to
11 qualify these firms to participate in programs for these enterprises
12 administered by the state of Washington, any city, town, county,
13 special purpose district, public corporation created by the state,
14 municipal corporation, or quasi-municipal corporation within the
15 state of Washington, and no program may require qualifications or
16 credentials beyond certification by the office in order for an
17 enterprise qualify as a minority business enterprise, a socially and
18 economically disadvantaged business enterprise, or a women's
19 business enterprise.

Commented [WK9]: This was an attempt to clarify/reinforce that the certification by OMWBE is sufficient for any programs administered by local governments (and others).

20 This statewide certification process will prevent duplication of
21 effort, achieve efficiency, and permit local jurisdictions to
22 further develop, implement, and/or enhance comprehensive systems of
23 monitoring and compliance for contracts issued by their agencies.

24
25 **Sec. 8.** RCW 39.19.250 and 2021 c 160 s 7 are each amended to
26 read as follows:

27 (1) For the purpose of annual reporting on progress required by
28 this chapter, each state agency, local government, and educational
29 institution shall submit data to the office and the office of
30 minority and women's business enterprises on the participation by
31 qualified minority and women-owned and controlled businesses in the
32 agency's, government's, or institution's contracts and other related
33 information requested by the director. Submissions shall include the
34 numbers and percent of certified minority and women owned businesses

1 and small businesses on the agency, government, or institution's
2 small works rosters and the percent of contract awards and dollar
3 amount of contracts awarded to such firms. The director of the
4 office of minority and women's business enterprises shall determine
5 the content and format of the data and the reporting schedule, which
6 must be at least annually. Each agency, government, or institution
7 shall place the data reported to the office on the reporting
8 entities' website in a location related to procurement.

Commented [WK10]: Language detailing the small works roster information that would be required to be submitted.

9 (2) The office must develop and maintain a list of contact
10 people at each state agency and educational institution who are able
11 to present to hearings of the appropriate committees of the
12 legislature its progress in carrying out the purposes of chapter
13 39.19 RCW.

Commented [WK11]: This would require the agency, etc. to post the information reported to OMWBE on its website.

14 (3) The office must submit a report aggregating the data
15 received from each state agency, local government, and educational
16 institution, and the information identified and actions taken under
17 RCW 39.19.060(3) and 39.19.090(4), to the legislature and the
18 governor.

19 (4) A city or county fully planning under RCW 36.70A.040 that
20 fails to provide the information required under this section is
21 ineligible for grants from the department of commerce under chapter
22 36.70A. RCW.

Commented [WK12]: Here's the requirement for cities/counties fully planning under RCW 36.70A.040 to provide MWBE participation information in order to be eligible for grants. I added language to Section 9 that would allow Commerce to give a grant to MRSC to help local governments with this reporting.

23 (5) For the purposes of this section, "local government" means
24 any city, town, county, special purpose district, public corporation
25 created by the state, municipal corporation, or quasi-municipal
26 corporation.

RCW 39.19.060 also contains data reporting requirements (along with planning requirements), but they currently only pertain to agencies and educational institutions.

27
28 **NEW SECTION. Sec. 9.** A new section is added to chapter 36.70A RCW
29 to read as follows:

30 (1) Compliance with section 8 of this act shall be a requirement
31 for any county or city fully planning under RCW 36.70A.040 to be eligible
32 to receive a grant from the department under this chapter.

33 (2) The department may award grants to a public agency with
34 appropriate expertise and funded by local governments to assist local

1 governments in (a) adopting regulations allowing for contractors to be
2 selected on the basis of criteria ensuring they are qualified to perform
3 the work solicited, and that a contract is not solely awarded on the
4 basis of cost when special management, skills, experience, or other
5 criteria are important to performance; and (b) providing the information
6 required in section 8.

Commented [WK13]: This should allow Commerce to provide funds to a group like MRSC to assist local governments with this data collection.

7
8 **Sec. 10.** RCW 39.19.030 and 1996 c 69 s 5 are each amended to
9 read as follows:

10 There is hereby created the office of minority and women's
11 business enterprises. The governor shall appoint a director for the
12 office, subject to confirmation by the senate. The director may
13 employ a deputy director and a confidential secretary, both of which
14 shall be exempt under chapter 41.06 RCW, and such staff as are
15 necessary to carry out the purposes of this chapter.

16 The office shall consult with the minority and women's business
17 enterprises advisory committee to:

18 (1) Develop, plan, and implement programs to provide an
19 opportunity for participation by qualified minority and women-owned
20 and controlled businesses in public works and the process by which
21 goods and services are procured by state agencies and educational
22 institutions from the private sector;

23 (2) Develop a comprehensive plan insuring that qualified
24 minority and women-owned and controlled businesses are provided an
25 opportunity to participate in public contracts for public works and
26 goods and services, and develop programs for assisting qualified
27 businesses in applying for such contracts;

Commented [WK14]: Here's the requirement for OMWBE to assist businesses in applying for the contracts.

28 (3) Identify barriers to equal participation by qualified
29 minority and women-owned and controlled businesses in all state
30 agency and educational institution contracts;

31 (4) Establish annual overall goals for participation by
32 qualified minority and women-owned and controlled businesses for
33 each state agency and educational institution to be administered on
34 a contract-by-contract basis or on a class-of-contracts basis;

1 (5) Develop and maintain a central minority and women's business
2 enterprise certification list for all state agencies and educational
3 institutions. No business is entitled to certification under this
4 chapter unless it meets the definition of small business concern as
5 established by the office. All applications for certification under
6 this chapter shall be sworn under oath;

7 (6) Develop, implement, and operate a system of monitoring
8 compliance with this chapter;

9 (7) Adopt rules under chapter 34.05 RCW, the Administrative
10 Procedure Act, governing: (a) Establishment of agency goals; (b)
11 development and maintenance of a central minority and women's
12 business enterprise certification program, including a definition of
13 "small business concern" which shall be consistent with the small
14 business requirements defined under section 3 of the Small Business
15 Act, 15 U.S.C. Sec. 632, and its implementing regulations as
16 guidance; (c) procedures for monitoring and enforcing compliance
17 with goals, regulations, contract provisions, and this chapter; (d)
18 utilization of standard clauses by state agencies and educational
19 institutions, as specified in RCW 39.19.050; and (e) determination
20 of an agency's or educational institution's goal attainment
21 consistent with the limitations of RCW 39.19.075;

22 (8) Submit an annual report to the governor and the legislature
23 outlining the progress in implementing this chapter;

24 (9) Investigate complaints of violations of this chapter with
25 the assistance of the involved agency or educational institution;
26 and

27 (10) Cooperate and act jointly or by division of labor with the
28 United States or other states, and with political subdivisions of
29 the state of Washington and their respective minority, socially and
30 economically disadvantaged and women business enterprise programs to
31 carry out the purposes of this chapter. However, the power which may
32 be exercised by the office under this subsection permits
33 investigation and imposition of sanctions only if the investigation
34 relates to a possible violation of chapter 39.19 RCW, and not to

1 violation of local ordinances, rules, regulations, however
2 denominated, adopted by political subdivisions of the state.

3

4 NEW SECTION. Sec. 11. A new section is added to chapter 39.10 RCW
5 to read as follows:

6 The department of commerce may award grants to a public agency with
7 appropriate expertise and funded by local governments to provide
8 assistance to local governments in utilizing the procedures under this
9 chapter and in utilizing minority and women's business enterprises
10 certified under section 7 of this act, and may award grants to non-
11 profit organizations to provide minority and women businesses certified
12 under chapter 39.19 RCW for assistance and training in applying for and
13 participating in public works small works rosters under chapter 39.04
14 RCW, and in establishing qualifications for specialized work for public
15 agencies.

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Commented [WK15]: Language to allow Commerce to provide grants to a group like MRSC to work with local governments on alternative public works contracting procedures and in using MWBE, and allowing Commerce to provide a grant to a non-profit to work with MWBE in participating in small works rosters and in establishing specialized qualifications for public agencies.