

Capital Projects Advisory Review Board

Report to the Legislature, November 1, 2022

The following information and report is offered as requested as noted below:

Upon changes to statute [RCW 39.30.060](#) in the 2021 session in [ESB 5356](#) exempting alternative public works from the listing, and also adding a requirement for a second report from CPARB on November 1, 2022.

The reports must:

(a) Evaluate current subcontractor listing policies and practices.

(b) Recommend appropriate expansion of the number of subcontractors that may be listed in order to improve transparency and fairness without reducing competitive bidding and access to public works by minority and women-owned businesses; and

(c) Recommend possible project threshold and time frames for purposes of subcontractor listings for all scopes of work that are not required to list under law, including:

The timing of subcontractor listing,

bond requirements for subcontractors,

general contractors standard contract request, and

general contractor/ construction manager and design-build applications.

CPARB offers the following information and recommendation:

The Subcontractor Bid Listing Policy Evaluation Committee (SBLPEC) began meeting in July of 2020. The Objective of the committee was to provide a written report to the legislature as required by ESB 5356: (See Referenced notes a thru c above)

The committee is comprised of members from various stakeholder groups represented in CPARB including General Contractors, Specialty Subcontractors, Design and Engineering firms, Public Owners groups, Disadvantaged business groups and Labor. Meetings were held virtually in accordance with the Governors mandate regarding Public meetings during the Pandemic. Meetings were open to the public and conducted under Robert's Rules of Order. Minutes were taken and published. Seven meetings were conducted. Those participating in the meetings included representatives from Higher Education, General Contractors including representation from Association of General Contractors (AGC), Public Owners, Specialty Contractors, Public Agencies, Cities, Counties, Public Hospitals, and DES, Labor including representatives from the Electrical trade, the Mechanical Trades and Ironworkers. Other trades invited to meetings included Roofers, Painters, Building envelope contractors and Glazers.

Participants in the meetings reported on how the revised Subcontractor listing law, RCW 39.30.060, was working from their perspective, what issues it may be causing and how effective it was at its intended purpose "to allow fair, transparent, and competitive bidding while prohibiting bid shopping." (RCW 39.30.060.(6)) Participants were also asked to discuss the current legislation with their constituents and report back to the committee any possible or desired changes or modifications to the current legislation.

The topics that were brought forth at the meetings included:

- Additional trades to be listed
- Modifications to the time frame of the listing
- Bid Shopping
- Bid Errors and Protests
- Value to the taxpayers
- History of the original legislation
- Listing as a component of being Responsive or Not
- Adding requirements to RCW 39.10 (Alternative Public Works Contracting Procedures)

Discussion points around various topics:

- Additional trades to be listed
 - Concerns by General Contractors that the process was too cumbersome and would lead to bid errors.
 - Concerns by Owners that they would have to enforce this, and they were already experiencing bid errors from the current revision.
- Modifications to the time frame of the listing
 - No party expressed strong interest in shortening or lengthening the time frame. General Contractors and Owners both express concerns about changing it by shortening the time or lengthening it.
- Bid Shopping.
 - MEP representatives shared the opinion that since the inception of the original listing law Bid Shopping in their trades was no longer prevalent.
 - No other trades vocalized concerns nor brought forth examples that Bid Shopping was currently prevalent in the Washington market.
- Bid Errors and Protests
 - Some Owners shared that since the revised RCW went into place, they have had to reject bids due to errors in the bid listing.
- Value to the taxpayers
 - No participant brought forth an inherent value to the taxpayers by expanding the listing requirements. Several Owners and General Contractors expressed concerns that bid errors and cumbersome bidding processes caused and/or will cause costs to increase at the taxpayers' expense.
- History of the original legislation
 - The group that initially created the listing law was invited to one meeting to share their original thoughts and purpose in creating the legislation. Bid shopping was the primary driver. Consensus in the group attending the meetings was that while Bid shopping most certainly occurred occasionally, it was no longer prevalent in the market.
- Listing as a component of being Responsive or Not
 - Questions by Owners as to whether or not this could be a requirement without being a part of the definition of responsiveness. Without it being a condition of responsiveness, most participants felt it would not be enforceable.
- Adding requirements to RCW 39.10 (Alternative Public Works Contracting Procedures)
 - Stakeholders representing the Ironworkers trades asked about the possibility of extending the legislation to parts of projects delivered via RCW 39.10. The listing requirements do not currently apply to such projects. There was discussion about how to effectively do this without causing significant disruption to the current process, when the subcontractors are the bidder in a public bid to the General Contractor, which all agreed would be detrimental.

At the June 15, 2022, meeting the subcommittee by unanimous vote adopted the following resolution as a report to CPARB. If CPARB approves the resolution the report would be submitted to the Legislature prior to the November 1, 2022, deadline.

Notes from the CPARB Meeting October 4, 2022:

After discussion there was a motion to approve the amended report removing DBE, Small Business, and Design and Engineering References and including "at this time" to verbiage. The motion result was 14 yes\ 3 no\ 1 abstention.

The votes against were Irene Reyes (Private Industry), Santosh Kuruvilla (Engineers) and Lekha Fernandes (OMWBE). The abstention was John Salinas (Specialty Contractors)

1. SBLPEC was open to all who wished to participate. Yet there was no participation on the committee from women and minority business. The lack of participation stemmed from a lack of capacity from CPARB Minority Business partners. These business partners are volunteers, and there were multiple committees requesting their participation.
2. The no votes stemmed more from a process perspective, where there was insufficient time to be able to review information and take an informed position, than from a policy perspective.
3. It is the intent of the CPARB chair to work with these individuals in the coming months to ensure all voices are heard and any concerns are raised and addressed.

CPARB Recommendation:

The SBLPE Committee recommends that the current legislation remains in place as written with no changes. SBPLEC further recommends that the GC/CM and JOC Committees to CPARB add to their Best Practices language the following: *“It is recommended as a best practice that all bidding documents including subcontractor quotes, supplier quotes and contractor estimates be treated as open book materials to all competing subcontractors, suppliers and Owners.”*

Respectfully submitted by Bill Dobyns, Committee Chair

End of Report