

2007 Legislative Session Updates



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Agenda

- Bidder Responsibility (SHB 2010)
- Small Works Roster changes and Dollar Threshold Consistency (SHB 1328)
- Miscellaneous Legislation
 - Government Employees: Prevailing Wages (HB 1370)
 - School Districts: Apprenticeship (EHB 1898)
 - Higher Education: Bid thresholds (ESSB 5770)
- Bill that didn't pass
- Alternative Public Works Contracting (SSHB 1506)

Agenda – Bidder Responsibility

- Background Information
- Definitions in SHB 2010
- Mandatory Responsibility Criteria
- Supplemental Responsibility Criteria
- Subcontractor Responsibility
- Other Responsibility Issues
- Responsiveness



Responsiveness vs. Responsibility

- **Responsiveness:** Is the *bid* “responsive” or in compliance to what was requested in the bidding documents?
- **Responsibility:** Is the *bidder* “responsible” or capable and qualified to perform the project?

Background on Bidder Responsibility

- Historical responsibility practice
 - Defined by the courts, not statute
- Substitute House Bill 2010
 - Process and stakeholders
- Guidelines to be developed
- Effective Date
 - July 22, 2007
- Small Works Roster criteria – changes

Small Works Roster Responsibility

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of previous contracts or services;
- The previous and existing compliance by the bidder with laws relating to the contract or services;
- Such other information as may be secured having a bearing on the decision to award the contract.

RCW 39.04.155 referencing RCW 43.19.1911

Definitions in SHB 2010

2 New Definitions

- “Award” means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality’s acceptance of the bid and intent to enter into a contract with the bidder.
- “Responsible bidder” means a contractor who meets the criteria in section 2 of this act.



Mandatory

Bidder Responsibility Criteria

Mandatory Responsibility Criteria

1. **Registered contractor**
 - At time of bid submittal (RCW 18.27.020)
2. **Current UBI number**
3. **Industrial insurance coverage**
4. **Employment security department number**
5. **State excise tax registration number**
6. **Not disqualified from bidding**

Implementing Mandatory Criteria

- Request information
 - On the bid form
- Verify compliance
 - Before award of contract
- If not listed on website of appropriate State agency:
 - Bidder may submit current documentation from State agency.
 - Bidder may contact State and have the online record modified to show compliance.

Registered contractor (<https://fortress.wa.gov/lni/bbip/>)

The screenshot displays the Microsoft Internet Explorer browser window at the URL <https://fortress.wa.gov/lni/bbip/>. The page is titled "Look Up a Contractor, Electrician or Plumber" and is part of the Washington State Department of Labor and Industries website. The navigation menu includes "Home", "Safety", "Claims & Insurance", "Workplace Rights", and "Trades & Licensing". The main content area features a search form with the following sections:

- Find a Law or Rule** | **Get a Form or Publication** | **Help**
- Look Up a Contractor, Electrician or Plumber**
- Select Information you have now:**
 - Business or Individual Name
 - Business Owner Name
 - City and/or County
 - License Number
 - UBI Number
- Provide at least one criteria to narrow your search:**
 - Name (part or all): Example: Doe, John
 - Type of License:
 - City (part or all):
 - County:
 - Status:
- Click to Look up >**
- Contact Us**
[Click here to report a fraud, if you believe a contractor is not licensed](#)

The footer contains contact information for the Department of Labor and Industries, including the phone number 1-800-547-8367 and links to the Access Washington portal.

Registered contractor

- If listed on L & I's website, verify:
 - Status **ACTIVE**
 - Check “Effective Date”
 - On or before bid submittal deadline
 - Check “Expiration Date”
- Check L&I list of infractions (see next slide).
- Timing of contractor registration:
 - RCW 18.27.020: Contractor may not bid without registration.
 - RCW 39.06.010: Agency may not execute contract with unregistered contractor.
 - SHB 2010: Agency must verify that bidder was registered as of the bid submittal deadline.

Registered contractor

<http://www.lni.wa.gov/TradesLicensing/Contractors/HireCon/Infractions/>

CONSTRUCTION, PLUMBER, AND FACTORY ASSEMBLED STRUCTURES INFRACTIONS
Issued 1/1/07 thru 3/31/07

Status as of 4/3/07

Name	City	State	Amount	Status	Violation
A & I STUCCO & PLASTERING	Kennewick	WA	1000	Unsatisfied	Not Registered as a Contractor
A & J CONCRETE, LLC	Camas	WA	1000	Unsatisfied	Not Registered as a Contractor
A & R CONCRETE	Shelton	WA	1000	Unsatisfied	Not Registered as a Contractor
A B PAINTING & TILE INC.	College Place	WA	500	Satisfied	Working out of scope
A C CONSTRUCTION	Spokane	WA	1000	Unsatisfied	Not Registered as a Contractor
A NATURAL PROGRESSION	Bothell	WA	1000	Unsatisfied	Not Registered as a Contractor
A-1 EXTERIOR NORTHWEST INC.	Vancouver	WA	200	Unsatisfied	Failure to purchase an alteration permit
A1 PLATINUM PAINTING LLC	Woodinville	WA	1000	Satisfied	Not Registered as a Contractor
AAA AFFORDABLE DRAIN	Veradale	WA	1000	Unsatisfied	Not Registered as a Contractor
AAA FURNACE INSTALLERS INC	Auburn	WA	1000	Unsatisfied	Not Registered as a Contractor
AAA FURNACE INSTALLERS INC	Auburn	WA	1000	Unsatisfied	Not Registered as a Contractor
AAAC ADVANCED ALL AROUND CONST	Kent	WA	1000	Unsatisfied	Not Registered as a Contractor
ABBS & COMPANY	Spokane	WA	1000	Unsatisfied	Not Registered as a Contractor
ABC GLASS & WINDOWS	Yakima	WA	1000	Unsatisfied	Not Registered as a Contractor
ABCO CONSTRUCTION	Pasco	WA	2000	Unsatisfied	Not Registered as a Contractor
ABCO CONSTRUCTION	Pasco	WA	1000	Unsatisfied	Not Registered as a Contractor
ACE LANDSCAPING	Walla Walla	WA	500	Satisfied	Working out of scope
ADVANCED PLUMBING & HEATING INC	Woodinville	WA	1000	Unsatisfied	Authorized uncertified worker
ADVANTAGE TILE INSTALLATIONS	Wenatchee	WA	1000	Unsatisfied	Not Registered as a Contractor
AGAPE CONSTRUCTION	Vancouver	WA	1000	Unsatisfied	Not Registered as a Contractor
ALCAZAR ELECTRIC	Zillah	WA	200	Unsatisfied	Failure to purchase an alteration permit
ALCAZAR ELECTRIC	Zillah	WA	200	Unsatisfied	Failure to purchase an alteration permit
ALEX EXPRESS	Auburn	WA	1000	Unsatisfied	Not Registered as a Contractor
ALL PRO ROOFING LLC	Sedro Woolley	WA	1000	Unsatisfied	Not Registered as a Contractor
ALL SOLVED HOME SOLUTIONS	Redmond	WA	1000	Unsatisfied	Not Registered as a Contractor
AMERICAN L S MAINTENANCE INC.	Longview	WA	2000	Unsatisfied	Not Registered as a Contractor
AMERICA'S PLUMBERS LLC	Renton	WA	500	Satisfied	Authorized uncertified worker
AMERICA'S PLUMBERS LLC	Renton	WA	1000	Satisfied	Not Registered as a Contractor
AMERICA'S PLUMBERS LLC	Renton	WA	250	Satisfied	Employing without Certification
AMSBURY SFRVICFS	Colville	WA	1000	Unsatisfied	Not Registered as a Contractor

Registered vs. Licensed Contractor

- RCW 39.06.010 (1)
- In addition to contractor registration, the following must also be licensed:
 - Electrical contractors
 - Elevator contractors
- According to RCW 39.06.010 (1), an agency can't executed a contract with an unregistered or unlicensed contractor.

Current UBI number (<http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/>)

The screenshot shows a Microsoft Internet Explorer browser window displaying the Washington State Department of Revenue website. The address bar shows the URL: <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/>. The website header includes the Department of Revenue logo and the slogan "Working together to fund Washington's future". A navigation menu on the left lists various services, with "Register my business" highlighted. The main content area is titled "Doing business" and "Lookup business information". It features a search form with a dropdown menu for "Begins with", a text input field, and a "City (optional)" field. Below the search form, there is a section for "Search by" with radio buttons for "Business or owner name" (selected) and "UBI/Tax Registration Number". A "Search" button is located below the form. To the right of the search form, there is a "More information" section with links to "Customer Protection", "Contractor, Electrician or Plumber Registration", "Corporation Data Search", "NAICS & SIC Tables", and "Speciality Licenses". The footer of the page contains a disclaimer: "The Washington State Department of Revenue's Business Records Database provides you with public information for business registered in Washington State. It is a free service provided for informational purposes. The Business Records Database uses a graphic image file display to ensure the accuracy and integrity of the data." The taskbar at the bottom shows the Start button and several open applications, including "Inbox - Microsoft...", "Purdy, Mike - A...", "Google Image R...", "Lookup business...", "Weekly Report f...", and "Microsoft Power...". The system clock shows the time as 11:29 AM.

Current UBI number

Results - Microsoft Internet Explorer
File Edit View Favorites Tools Help

Address: <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/Results.aspx?RequestType=1&Criteria=Municipal+Research&City=#brdResults>

Department of Revenue
Washington State
"Working together to fund Washington's future"
My Account: [Login](#) | [Join](#)

Doing business

Home / Doing business / Register my business / Lookup business information / Results

Results

NOTE: If the word "non-revenue" appears in the space after Tax Registration Number, the account is not registered with the Department of Revenue. Although the business may not be required to register with the Department of Revenue, it is registered with one or more other agencies in the state.

**Washington State Department of Revenue
State Business Records Database Detail**

TAX REGISTRATION NUMBER :	600011111
UBI :	600011111
LEGAL ENTITY :	MUNICIPAL RESEARCH & SERVICES CTR OF WA
DOING BUSINESS AS :	
MAILING ADDRESS :	BUSINESS LOCATION :
2601 4TH AVE STE 800 SEATTLE, WA 98121-1280	1200 5TH AVE # 1300 SEATTLE, WA 98101-
OWNER TYPE :	CORPORATION
ACCOUNT OPENED :	01/01/1970
ACCOUNT CLOSED :	OPEN
NAICS CODE :	541720
	04/27/2007 11:57 AM

FOR NON-COMMERCIAL USE ONLY

As of 8/31/2005, the Standard Industrial Code (SIC) has been replaced with the North American Industry Classification System Code (NAICS). For more information, [click here](#)

Done Internet

start | Inboxes - Microsof... | Purdy, Mike - A... | Google Image R... | Results - Micros... | Weekly Report f... | Microsoft Power... | 11:57 AM

Current UBI number

- Check for:
 - UBI: there should be a number here
 - Account Closed: OPEN
- UBI number is required by three laws referenced in RCW 39.06.010.
 - RCW 50.12.070 (1)(b)
 - 51.16.070 (1)(b)
 - 82.32.070 (1)(b)
 - Amended in 1999 changing subsection (1)(b) to subsection (2).

Industrial Insurance coverage

(<https://fortress.wa.gov/lni/crpsi/MainMenu.aspx>)

The screenshot shows a Microsoft Internet Explorer browser window displaying the Washington State Department of Labor and Industries website. The page title is "Verify Workers' Comp Premium Status - Main Menu". The browser's address bar shows the URL: <https://fortress.wa.gov/lni/crpsi/MainMenu.aspx>. The website header includes navigation tabs for Home, Safety, Claims & Insurance, Workplace Rights, and Trades & Licensing. A left sidebar contains a tree view of site categories, with "Verify Workers' Comp Premium Status" selected under "Contractors". The main content area features a "Verify Workers' Comp Premium Status" section with a "Contact Us" button and a search form. The search form prompts the user to "Search for an employer by filling one of the following fields:" and includes input fields for "Workers' Comp Account #", "UBI #", and "Business Name (Partial or full name)". Below the search form is a "Did you know ..." section with text about liability and a list of requirements.

Washington State Department of Labor and Industries

Home Safety Claims & Insurance Workplace Rights Trades & Licensing

Verify Workers' Comp Premium Status

Please note, to receive protection from liability for your sub contractors unpaid industrial insurance premiums, you must comply with the six requirements noted below.

Contact Us

Related L&I Topics

- > How to protect yourself when hiring a contractor.
- > Contractor Tracking
- > How to review your tracking requests or tracking requests requested by other persons (contractors).

Find out if your contractor or any other employer has an up-to-date industrial insurance (workers' compensation) account.

Fill out the online **Contractor Tracking Request** form to be notified if they get behind in paying premiums or if they become unregistered or unlicensed during the next year.

Search for an employer by filling one of the following fields:

Workers' Comp Account #:

UBI #:

Business Name:
(Partial or full name)

Search Clear Help

Did you know ...

... that under Washington State law*, you may be liable for the unpaid workers' compensation (industrial insurance) premiums of any business you hire or contract with? (*See RCW 51.12.070)

In the construction industry, you can protect yourself from liability for your subcontractor's unpaid premiums by ensuring the following 6 requirements are met:

1. Yourself as prime contractor and your subcontractor(s) are registered as contractors under RCW 18.27 or licensed under RCW 19.28

Industrial Insurance coverage

Verify Workers' Comp Premium Status - Account Information - Microsoft Internet Explorer

Address: <https://fortress.wa.gov/lni/crpsi/AcctInfo.aspx?AccountId=31134100&BusinessId=600011111&BusinessName=MUNICIPAL+RESEARCH+%26+SERVICES&Busin>

Department of Labor and Industries
Employer Liability Certificate
Date: 05/08/2007

UBI #: 600 011 111 -- Check for active Department of Revenue tax account.

Business Name: MUNICIPAL RESEARCH & SERVICES
Legal Business Name: MUNICIPAL RESEARCH & SERVICES CTR OF WA
Account #: 311,341-00
'Doing Business As' Name: MUNICIPAL RESEARCH AND
Estimated Workers Reported: Quarter 1 of Year 2007 "21 to 30 Workers"
(See Description Below)
Workers' Comp Premium Status: Account is current. Firm has voluntarily reported and paid their premiums.
Licensed Contractor?: No
Risk Classification: [Get risk classification information.](#)
Experience Factor: [Get experience factor history.](#)
Account Representative: T1 / TRICIA KUGAN (360)902-4612 - Email: T1BT235@lni.wa.gov

What does "Estimated Workers Reported" mean?
Estimated workers reported represents the number of full time position requiring at least 480 hours of work per calendar quarter. A single 480 hour position may be filled by one person, or several part time workers.

Industrial Insurance Information
Employers report and pay premiums each quarter based on hours of employee work already performed, and are liable for premiums found later to be due. Industrial insurance accounts have no policy periods, cancellation dates or limitations of coverage. (See RCW 51.12.050 and 51.16.190.)

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official state government web site
[Visit access.wa.gov](#)

Done | Internet

start | [Inbox - Microsoft Out...](#) | [Purdy, Mike - May. 7...](#) | [Verify Workers' Comp...](#) | [Weekly Report for th...](#) | [Microsoft PowerPoint ...](#) | 9:46 AM

Industrial Insurance coverage

- Check for:
- Workers' Comp Premium Status:
 - Account is current. Firm has voluntarily reported and paid their premiums.

Employment Security Department Number

- Information not available on a website for verification
- Options:
 - Rely on bidder's statement on bid form
 - Ask bidder to submit documentation from Employment Security

State excise tax registration number (<http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/>)

The screenshot shows a Microsoft Internet Explorer browser window displaying the Washington State Department of Revenue website. The address bar shows the URL: <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/>. The website header includes navigation links: ABOUT US | CONTACT US | QUESTIONS & ANSWERS | TEXT VERSION | PRINTER FRIENDLY. The main content area is titled "Doing business" and "Lookup business information". It features a search form with a dropdown menu for "Begins with" and a text input field for "City (optional)". Below the search form, there is a section for "Search by" with radio buttons for "Business or owner name" (selected) and "UBI/Tax Registration Number". The page also includes a sidebar with a navigation menu and a "More information" section with links to various services like Customer Protection, Contractor, Electrician or Plumber Registration, Corporation Data Search, NAICS & SIC Tables, and Speciality Licenses. The footer of the page states: "The Washington State Department of Revenue's Business Records Database provides you with public information for business registered in Washington State. It is a free service provided for informational purposes. The Business Records Database uses a graphic image file display to ensure the accuracy and integrity of the data."

State excise tax registration number

The screenshot shows a Microsoft Internet Explorer browser window displaying the Washington State Department of Revenue website. The address bar shows the URL: <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/Results.aspx?RequestType=1&Criteria=Municipal+Research&City=#brdResults>. The page title is "Results - Microsoft Internet Explorer".

The website header includes navigation links: ABOUT US | CONTACT US | QUESTIONS & ANSWERS | TEXT VERSION | PRINTER FRIENDLY. The Department of Revenue logo is present with the tagline "Working together to fund Washington's future". A search bar and "My Account: Login | Join" are also visible.

The left sidebar contains a navigation menu with the following items:

- > Home
- > File & pay taxes
- > Doing business
- > Business types
- > Register my business
- > My account
- > Audits
- > Find taxes & rates
- > Workshops & education
- > Get a form or publication
- > Find a law or rule

The main content area is titled "Doing business" and "Results". It includes a "Back to search results" link and a note: "NOTE: If the word 'non-revenue' appears in the space after Tax Registration Number, the account is not registered with the Department of Revenue. Although the business may not be required to register with the Department of Revenue, it is registered with one or more other agencies in the state."

The central focus is a box titled "Washington State Department of Revenue State Business Records Database Detail" containing the following information:

TAX REGISTRATION NUMBER :	600011111
UBI :	600011111
LEGAL ENTITY :	MUNICIPAL RESEARCH & SERVICES CTR OF WA
DOING BUSINESS AS :	
MAILING ADDRESS :	BUSINESS LOCATION :
2601 4TH AVE STE 800	1200 5TH AVE # 1300
SEATTLE, WA 98121-1280	SEATTLE, WA 98101-
OWNER TYPE :	CORPORATION
ACCOUNT OPENED :	01/01/1970
ACCOUNT CLOSED :	OPEN
NAICS CODE :	541720
	04/27/2007 11:55 AM

Below the box, it states: "FOR NON-COMMERCIAL USE ONLY". A note at the bottom explains: "As of 8/31/2005, the Standard Industrial Code (SIC) has been replaced with the North American Industry Classification System Code (NAICS). For more information, [click here](#)".

The taskbar at the bottom shows the Start button, Internet Explorer icon, and several open applications: "Inbox - Microsof...", "Purdy, Mike - A...", "Google Image R...", "Results - Micros...", "Weekly Report f...", and "Microsoft Power...". The system clock shows "11:55 AM".

State excise tax registration number

- Check for:
 - Tax Registration Number:
 - Bidder should have a number
 - If it states “non-revenue,” bidder does not have a number and most likely should have one
 - Account Closed:
 - Should state “OPEN”
 - If it states “CLOSED” bidder doesn’t have registration

Not disqualified from bidding

- Violation of RCW 39.06.010 (2) – UBI number
 - “No agency of the state or any of its political subdivisions may execute a contract...For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or *82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract.”
 - Three referenced laws state that contractor must have a UBI number, and agency must keep a record of it.
- Violation of 39.12.065 (3) – Prevailing Wages
 - <http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/default.asp>



Supplemental

Bidder Responsibility Criteria

Supplemental Responsibility Criteria

- Criteria: May adopt relevant supplemental bidder responsibility criteria for a particular project
- Bidding documents must include the following:
 - Supplemental criteria
 - Basis for evaluation
 - Deadline for bidder to submit responsibility documentation
 - Deadline for bidder to appeal a “not responsible” determination
- Changes to criteria during bidding period
 - Potential bidder may request changes
 - Owner must evaluate request
 - If owner changes criteria, issue addendum

Definition of Supplemental Criteria

- Supplemental bidder responsibility criteria describe the experience, and/or certification requirements or qualifications that must be met by the low bidder, their subcontractors, suppliers, or employees in order for the bidder to be considered responsible and thus awarded the project. The low bidder must submit specified documentation after bid opening that is evaluated by the Owner to determine if the bidder has met the responsibility criteria.

Developing Supplemental Criteria

RELEVANT

Specific

Objective

Mandatory

Elements of Supplemental Criteria

- Necessity for qualifications
- Objectivity of supplemental responsibility criteria
- Appropriateness of each criterion
- List documentation required
- Relationship between criteria and documentation
- Relationship of responsibility criteria to bidding pool
- Tailored to each project

Example

- During the year 2000 or more recently, the Bidder shall have successfully completed at least one project with a construction cost of at least \$750,000, in a licensed acute care hospital that remained in operation during the construction period, and that included work adjacent to an occupied patient care area (“adjacent” means immediately adjacent to the work, or on the floor below or above the work). This project must have included the installation of complex diagnostic imaging or radiation therapy equipment (for example: MRI, Angiography Bi-Plane, Linear Accelerator, Gamma Knife, CT Scanner) by the owner’s equipment vendor.

Evaluating Supplemental Criteria

- Bidder must meet all criteria in order to be responsible.
- Use structured form to collect information from bidder.
- If bidder fails to supply information within the time specified in the bidding documents, owner may base responsibility determination on any available information related to the supplemental criteria, or find the bidder not responsible.

“Not Responsible” Determination

- Owner must provide reasons in writing
- Bidder may appeal
 - Within time specified in bidding documents
 - Submit additional information
- Owner must consider additional information
 - If bidder still “not responsible,” owner issues final determination
 - No award to another bidder until two business day after bidder receives final determination



Subcontractor Responsibility

Subcontractor Responsibility

- Verification of subcontractor responsibility
 - Contractor must verify responsibility of first tier subcontractors
 - Subcontractors of any tier must verify responsibility of their subcontractors
- Subcontractor verification requirement and responsibility criteria
 - Must be in every public works contract
 - Must be in every subcontract of any tier

Subcontractor Responsibility Criteria

1. Registered contractor
 - At time of subcontract bid submittal (RCW 18.27.020)
2. Current UBI number
3. Industrial insurance coverage
4. Employment security department number
5. State excise tax registration number
6. Not disqualified from bidding
7. **Electrical contractor license (if required)**
8. **Elevator contractor license (if required)**

Suggested Contract Language

Subcontractor Responsibility:

1. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include substantially the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.
2. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
 - At the time of subcontract bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
 - Have a current state unified business identifier number;
 - If applicable, have:
 - Industrial insurance coverage for the subcontractor's employees working in Washington as required in Title 51 RCW;
 - An employment security department number as required in Title 50 RCW; and
 - A state excise tax registration number as required in Title 82 RCW;
 - An electrical contractor license, if required by Chapter 19.28 RCW;
 - An elevator contractor license, if required by Chapter 70.87 RCW.
 - Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).



Other Responsibility Issues

Other Responsibility Issues

- Pre-Qualification
- Contractor Performance Evaluation Systems
- Debarment Review
 - Federal agencies granting funding for the project

Pre-Qualification

- Only permitted if specifically authorized by Legislature.
 - WSDOT authorized by RCW 47.28.070
- Exceptions based on need and tolerance for risk.

Contractor Performance Evaluation

- Establish objective evaluation program
- Define and publish how program will be used for bidder responsibility and debarment
- Use for all projects
- Support ratings with objective comments
- Provide for appeal by contractor of rating
- Maintain database of ratings



Responsiveness

Responsiveness – Irregular Bids

- **Material vs. Immaterial Irregularities**
- Owner should reject a bid as non-responsive that is materially different from the requirements of the bidding documents.
- Owner may waive an irregularity in the bid as an informality if the irregularity is immaterial.

The Test of Materiality

- **How do you determine if an irregularity in a bid is material or immaterial?**
 - The test as to the materiality of a variance is whether it gives a bidder a substantial advantage or benefit not enjoyed by other bidders.

(Gostovich v. City of West Richland, March 1969)

Responsiveness Issues

- Subcontractor's List
- Bid Guaranty
- Timeliness of bid submittal
- Signature on the bid
- Bid price submitted on all required items
- Mandatory pre-bid site meeting
- Addenda acknowledgement
- Documents to be submitted with the bid

Subcontractor's List

- **RCW 39.30.060**

- “Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder’s bid non-responsive and, therefore, void.”

Subcontractor's List

- **Applies to projects:**
 - Estimated to cost \$1 million or more
 - For 3 trades:
 - HVAC (heating, ventilation, and air conditioning)
 - Plumbing (18.106 RCW)
 - Electrical (19.28 RCW)
- **Deadline for submittal of list:**
 - With bid or within 1 hour of bid submittal

Bid Guaranty

- **No Bid Guaranty**
- **Insufficient Bid Guaranty**
 - Less than 5%
 - Additives and Alternates
 - Sales Tax
- **Inadequate Bid Guaranty**
 - Bid Bond not signed by bidder or surety
 - No Power of Attorney
 - Bid Bond for different project or owner

Timeliness of Bid Submittal

- **Was the bid submitted by the deadline?**
- Court cases:
 - Gostovich vs. City of West Richland (1969)
 - Bid received next business day after bid submittal deadline
 - Bid had been place in mail 24 hours ahead of bid submittal deadline
 - Bidder had no advantage not enjoyed by other bidders
 - Quinn vs. King County Fire Protection District 26 (2002)
 - Bidder completed writing bid before deadline, but had trouble putting it into envelope. Bid received 5 to 10 seconds late.
 - Court held that Quinn had not demonstrated what competitive advantage Korsmo had in submitting bid late.

Signature on the Bid

- **Was the bid form signed by the bidder?**
- Court case
 - Farmer Construction vs. State case
 - May be considered an immaterial irregularity
 - Bid form and bid bond connected by internal reference

Bid Submitted on All Items

- **Did the bidder submit a bid on all required items?**
 - Additives
 - Alternates
 - Deductives
 - Bid items

Mandatory Pre-Bid Site Meeting

- Use with caution:
 - Restricted or secure facilities
 - Particularly complex projects
- More than 1 meeting: If possible, schedule more than one meeting to give bidders an option of when to attend.
- When and where: Clearly state the time and place of the meeting in the bidding documents.
- Document reasons in bidding documents for requiring Mandatory Pre-Bid Site Meeting.
- Protest: Uncertain whether a protest of a bidder not attending meeting would be successful or not.

Other Responsiveness Issues

- Addenda: Were the Addenda acknowledged by the bidder on the bid form?
 - Significance of Addenda on price and understanding of the project.
- Submit Documents with Bid: Did the bidding documents require the bidder to submit other documents with the bid?
 - Generally, don't require additional information to be submitted with the bid.

Summary of Responsiveness

- Material or immaterial irregularity?
 - Does the irregularity give the bidder an advantage not enjoyed by other bidders?
- What do the bidding documents say?
- Applicable law or court cases?
- Case-by-case analysis based on facts.
- Consult your attorney or other experts.

Miscellaneous Legislation

- Government Employees
 - Prevailing Wages (HB 1370)
- School Districts
 - Apprenticeship (EHB 1898)
- Higher Education
 - Bid thresholds (ESSB 5770)



Prevailing Wages

- HB 1370 – effective July 22, 2007
- Technical amendment to RCW 39.12.020
- Exempts public employees from prevailing wage requirements, regardless of how frequently they're paid.
- This chapter shall not apply to workers or other persons regularly employed **on monthly or per diem salary** by the state, or any county, municipality, or political subdivision created by its laws.

Legislation deletes the language in bold text above.

Apprenticeship

- EHB 1898 adds School Districts
- Effective for projects bid after Jan. 1, 2008
- Apprenticeship percentage requirements:

Estimated to cost	Bid after	Percentage Required
\$3 million	January 1, 2008	10%
\$2 million	January 1, 2009	12%
\$1 million	January 1, 2010	15%

Apprenticeship

- Percentages may be adjusted for reasons specified in legislation.
- Percentage is based on total labor hours and does not include foremen, superintendents, owners, and workers not subject to prevailing wage requirements.
- Apprentices must be enrolled in a State approved apprenticeship training program.

Bidding Thresholds

- ESSB 5770 applies only to Higher Education
- Increases competitive bidding threshold for public works as follows:
 - For multiple trades, from \$35,000 to \$55,000
 - For single trade, from \$15,000 to \$35,000
- Prevailing wages apply above these thresholds, or for projects under the thresholds that are publicly bid.

Bill that didn't pass

- Trench Excavation (HB 2009)
- Mike M. Johnson case (HB 1765)
- Prevailing wages apply to site of work for out of state prefab work (HB 1908)

REJECTED



Alternative Public Works Contracting (SSHB 1506)

- General Contractor/Construction Manager
- Design - Build
- Job Order Contracting
- Effective July 1, 2007
- Legislative Votes:
 - House: 98 – 0
 - Senate: 47 – 0
- Sunsets June 30, 2013



Organizational Structure of SSHB 1506

- Section 1 – Statement of purpose
- Part 1 – General Provisions
 - Definitions
 - Capital Projects Advisory Review Board (CPARB)
 - Project Review Committee (PRC)
- Part 2 – Design-Build
- Part 3 – General Contractor / Construction Manager
- Part 4 – Job Order Contracting
- Part 5 – Other Provisions

General Provisions

- Capital Projects Advisory Review Board (CPARB)
 - Broader role for all public works delivery methods
 - Expands membership of CPARB
 - Power to appoint members of Project Review Committee (PRC)
- Project Review Committee (PRC)
 - Approve projects for GC/CM or Design/Build
 - Certify public bodies to use GC/CM or Design/Build
 - Approve Design/Build projects under \$10 million for certified public bodies



**General Contractor /
Construction Manager
(GC/CM)**

GC/CM

- What is a GC/CM project?
- What public bodies may use GC/CM?
 - All public bodies, provided:
 - Project Review Committee must:
 - Approve the GC/CM project, or
 - Have certified the public body to use GC/CM
- What is the dollar threshold?
 - None. Previous law: \$10 million or more.

GC/CM Total Contract Cost

- Total Contract Cost:
 - Fixed amount for Specified General Conditions work.
 - Negotiated MACC.
 - Negotiated support services.
 - These may include reimbursable expenses
 - May be included in the Specified General Conditions
 - Percent Fee on the negotiated MACC.
- Old term was Guaranteed Contract Cost

Criteria for Using GC/CM

(Section 301)

- Implementation of project involves complex scheduling, phasing, or coordination.
- Project involves construction at an occupied facility which must continue to operate during construction.
- Involvement of GC/CM during design stage is critical to success of the project.
- Project encompasses a complex or technical work environment.
- Project requires specialized work on a building that has historic significance.

GC/CM Project Management

Responsibilities of Public Body

(Section 302)

- Prepare appropriate, complete, and coordinated design documents
- Confirm performance of constructability analysis prior to solicitation of subcontract bids.
- Have budget contingencies of at least 5% of contract value.
- Have appropriate A/E staff on construction site.
- Employ staff or consultants with expertise and experience in managing similar projects.
- Include alternative dispute resolution provisions in contract.
- Include contract provisions on timing for Owner responses to managing requests for equitable adjustment, change orders, and claims.
- Submit project information as required by CPARB.
- Include contract documents requiring contractor, subcontractors, and designer to submit project information as required by CPARB.

GC/CM Contracting Requirements

(Section 302)

- Maximum 5% incentive may be offered for early completion, cost savings, or other performance goals.
- Final MACC:
 - Savings on MACC (not part of incentive payment) accrues to public body.
 - Costs over MACC is GC/CM's responsibility
- Interest due GC/CM on change orders not issued within 30 days.

GC/CM Solicitation and Award

(Section 303)

- Select GC/CM early – no later than completion of schematic design.
- Conduct competitive RFP process (include evaluation criteria and other information).
- Committee to select finalists to submit final proposals with prices.

Maximum Allowable Construction Cost (Section 304)

- Negotiate MACC when construction documents are at least 90% complete.
- GC/CM may bid major subcontract packages before agreement on MACC.
- Public body may authorize GC/CM subcontract bidding, award, and construction prior to complete plans and specifications.
- If unable to negotiate MACC, public body may begin negotiations with next highest ranked firm, or start over.
- Renegotiate percent fee if negotiated MACC more than 15% than the estimated MACC, due to public body changes in scope.

Subcontract Bidding Procedures

(Section 305)

- Competitive bidding with public bid openings.
 - For subcontractor work, equipment, and materials
- Bidder responsibility criteria and process.
- Bonding (bid, payment and performance).
- Subcontract protest procedures.
- Claim of error and prohibition on re-bidding.
- When negotiation of bid price is permitted.
- GC/CM written explanation if all bids rejected

Self-Performed Work by GC/CM

(Section 306)

- GC/CM self-performing work prohibited unless:
 - GC/CM normally performs the type of work.
 - Public body manages bid opening.
 - Solicitation indicates GC/CM intends to submit bid
- Prohibition on GC/CM buying equipment or materials to assign to subcontractor to install.
- 30% of negotiated MACC is maximum amount of GC/CM self-perform work.
 - Negotiated support services by GC/CM not considered subcontract work in this context.


Pre-Bid Subcontractor Eligibility

(Section 307)

- To establish criteria, GC/CM and public body must:
 - Conduct hearing
 - Publish notice of intent in newspaper at least 14 calendar days before hearing
 - Consider comments received
 - Issue final determination, modifying as appropriate based on comments received
 - Protest within 7 calendar days of final determination to superior court
- Protest from subs not meeting criteria
 - Same process as for establishing criteria

Subcontractor Agreement Provisions (Section 308)

- In its subcontracts, GC/CMs may not:
 - Delegate, restrict, or assign GC/CM's implied duty not to hinder or delay the subcontractor.
 - Delegate, restrict, or assign the GC/CM's authority to resolve subcontractor conflicts.
 - Restrict subcontractor's right to damages for changes to schedule or work to the extent that the delay is caused by the GC/CM.
 - Require subcontractor to bear the cost of trade damage repair except to the extent the subcontractor is responsible for the damage.
 - Require subcontractor to waive claims for time or compensation or other rights as part of progress payment applications.



Design / Build

Criteria for Use of Design-Build

- Total project cost over \$10 million
- Design and construction activities, technologies, or schedule to be used are highly specialized.
- Project design is repetitive in nature and is an incidental part of the installation or construction
- Regular interaction with and feedback from facilities users and operators during design is not critical

Other Design-Build Issues

- Project Review Committee approval
- May use for the following regardless of cost:
 - Parking garages
 - Preengineered metal buildings or prefabricated modular buildings
- Design-build-operate-maintain (DBOM)
 - 3 year maximum except for utility projects
- When negotiation of low bid is permitted

Selection Process

- RFP process to be used
 - Project description
 - Evaluation factors and weighting
 - Other
- Evaluation committee
- Select finalists for best and final proposals
 - Content of final RFP
- Payment and performance bond required
- Honorarium for finalists



Job Order Contracting

What is Job Order Contracting (JOC)?

- Use of unit price book
- Use of work orders
- Reduces total lead-time for getting contractor for:
 - Construction of public works
 - Repair and renovation of public facilities

JOC Thresholds

- \$300,000 per work order
- 2 work orders in a one year period up to \$350,000
- Maximum per year is \$4 million
- Two year contract, renewable for on additional year
- 90% of the work to be performed by subs
- No more than 2 JOC contracts at a time

JOC Solicitation Process

- Publish Request for Proposals
 - State reason(s) for using JOC
 - Qualifications required
 - Identity of unit price book to be used
 - Minimum contract amount
 - Selection and evaluation process including factors and weighting
 - Price
 - Ability to perform
 - Solicit proposals from MWBEs
 - Include the form of contract
 - Method for pricing renewals or extensions to JOC

Agencies Authorized to use JOC

- State Department of General Administration
- University of Washington
- Washington State University
- Cities with 70,000 population or more
 - Public authorities chartered by the city
- Counties with 450,000 population or more
- Port districts with \$15M total revenue or more
- PUDs with \$23M energy sales revenue or more
- All school districts
- State ferry system

Other JOC Requirements

- JOC to publish notification of intent to perform public works annually
- No work orders until MWBE plan approved by public body after consulting with OMWBE
- Prevailing wages apply
- Each work order a separate contract for purposes of RCW 39.08, 39.19, 39.76, and 60.28
- No A/E work not associated with a specific work order
- Reporting requirements

Questions



Mike Purdy has more than 27 years of experience as a manager in public contracting and procurement. He is currently the Contracts Manager for the University of Washington's Capital Projects Office and is responsible for managing design and construction contracts for more than \$1 billion worth of projects at the University. Before joining the UW in 2005, he spent five years at the Seattle Housing Authority where he served as Contracting and Procurement Manager, overseeing all of the contracting and purchasing (construction, design consultants, other consultants, goods, supplies, and services) for the largest residential landlord in the state. Prior to that he worked for the City of Seattle for more than 21 years, where he administered the city's construction and consultant contracts as the city's Contracting Manager.

He has a bachelor's degree in business and public administration and an MBA, both from the University of Puget Sound, and a master of divinity degree from Fuller Theological Seminary. Mike is also the principal of Michael E. Purdy Associates (www.mpurdy.com), a consulting firm providing contracting and procurement advice and services to government agencies in the area.

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