

WASHINGTON STATE BUSINESS DIVERSITY INITIATIVE PROPOSED ROADMAP

November 2015



Table of Contents

Summary

Acknowledgements.....	Page 1
At Issue	Page 2
About the Roadmap.....	Page 3
Countermeasures.....	Page 4

Roadmap

Why	Page 5
What: Measurable Performance Targets to Achieve the Objectives	Page 6
How.....	Page 7
Immediate Action	Page 8-9
Countermeasure Implementation: Short- and Long-Term.....	Pages 10-18
Improved Measuring Framework.....	Pages 10-11
Procurement Planning and Forecasting.....	Page 12
Innovative Contracting Methods	Page 13
Legislative and Policy Frameworks	Page 14
Community Engagement	Pages 15-16
Diversity Culture and Framework	Pages 17-18

Background

Determining the Current State	Pages 19-20
Proposed Timeline	Page 21
Appendix A – Subcabinet and Operational Team Members	Pages 1-2
Appendix B – Relevant RCWs.....	Pages 3-10

Acknowledgements

A work team set up to support the Washington State Business Diversity Subcabinet was established in July 2015 to help the subcabinet address the long-standing problem of low small and diverse business participation in state contracting and procurement. The team's work helps the state understand the roots of this problem, and move forward in a meaningful and sustainable way to remove barriers, improve opportunities and ensure fair, nondiscriminatory and equitable outcomes.

In just 14 weeks, the team quickly coalesced, using both Lean and agile methodologies, to successfully complete a very important mission – laying a solid foundation for statewide change. This was an enormous undertaking with an extremely compressed schedule. The team interviewed dozens of state agency staff, met regularly with the Civil Rights Coalition, hosted or attended several diverse community events; gathered hundreds of documents; and developed a comprehensive understanding of systems, processes, laws, and policies.

The result the team's intensity, expertise, effort and passion for this issue will make a vital difference in the state's ability to improve business diversity in Washington State. The team developed this proposed roadmap for change. The team's work will help the state foster a strong economy that works for everyone, with more opportunity, better prosperity and improved quality of life for all Washingtonians. The Business Diversity Subcabinet thanks the following team members for their outstanding caring and dedication:

Lori McCleary, Project Manager/Scrum Master, Department of Enterprise Services

Kennly Asato, Assistant to the Director, Department of Enterprise Services

Servando Patlan, Business Diversity and Outreach Manager, Department of Enterprise Services

Linda Kent, Communications Manager, Department of Enterprise Services

Debbie McVicker, Deputy Director, Office of Women and Minority Business Enterprises

Tammie Wilson, Contracts and Purchasing Office Administrator, Department of Labor and Industries

Renee Swenson, Local Business Advisor, Department of Corrections

Kimberly Ames, Procurement and Supply Specialist, Health Care Authority

Dave Ziegler, Principal Engineer, Department of Transportation

Stacii McKeon, Performance Measurement Coordinator, Department of Social and Health Services

At issue

Diversity in state contracting is good for business, and good for the state. However, the number of small and diverse businesses with state contracts remains low. Small businesses are the backbone of the state economy, employing 1.2 million workers – about half of Washington’s total workforce. Improving economic opportunities for our small and minority-, women-, and veteran-owned businesses translates to stronger communities and a higher quality of life for all Washingtonians.

Many people at many different state agencies have worked hard to address this issue, but the fact remains the state has not seen significant improvement in contracting opportunities for small and diverse businesses since 1998. It is apparent that uncoordinated, inconsistent and piecemeal efforts will not fix this deeply-rooted problem.

As a state, we need to be more strategic. Agencies need to move forward together with a clear, consistent and comprehensive approach that is based on a common understanding of the issue. The path forward must be deliberate, sustainable and holistic.

In July 2015, Gov. Inslee chose 12 of his cabinet agencies and tasked them with increasing ways for small and diverse businesses to participate in Washington state contracting opportunities. This Governor subcabinet is directed to develop a cohesive statewide strategy instead of relying on the agency-by-agency strategies of the past.

The subcabinet is made up of directors from the state departments of Transportation, Social and Health Services, Enterprise Services, Corrections, Labor and Industries, and Veterans Affairs; the Health Care Authority; the Office of Minority & Women’s Enterprises; the commissions on African American Affairs, Asian Pacific American Affairs, and Hispanic Affairs; and the state Attorney General’s and Governor’s Offices. The state Department of Commerce also has a representative who monitors subcabinet progress and serves as a liaison to Commerce programs.

Summary: The Proposed Roadmap for Change

The proposed roadmap contains short-, mid- and long-term recommendations for countermeasures to achieve equity in state contracting and procurement opportunities. During its first 14 weeks, the Governor's Business Diversity Subcabinet was supported by a multi-agency work team that coordinated with key community members to gather data and develop the proposed roadmap for change. The work team recommends these efforts begin as soon as possible, and that short-, mid-, and long-term work be done concurrently.

Short-term recommendations

The team has identified 12 immediate actions that all agencies can take, and five additional actions for specific agencies to take. We believe once these actions are taken, there will be visible improvement **within 12 months.**

Mid-term recommendations

While the problem is too broad and complex for a quick fix, we believe information provided by the Subcabinet's work team establishes the foundation for the next steps necessary to fully develop and deploy the countermeasures. The team recommends that this broader foundational work **be done concurrently with the short-term actions (12 months to develop).**

This Executive Summary outlines the mid-term countermeasures that the team identified, broken out into six categories. These recommendations will help empower the state to truly address the root problems identified. Enacting each of these countermeasures will take extensive and concentrated work. Since this team's engagement has come to an end, we recommend establishing a new work team, sponsored by the Governor, that is made up of subject matter experts to continue the work and set the mid- and long-term actions in motion.

Long-term recommendation

In addition to putting the mid-term recommendations in place to achieve true and accurate measures, Washington state government will need a statewide solution for collecting, tracking and reporting data. This solution will take both planning and investment. It will also need to be planned in coordination with other statewide technology initiatives. Unlike the short- and mid-term recommendations, the timeframe for the long-term solution is unknown.

Countermeasures at a Glance

The Subcabinet work team identified six countermeasures the state should fully develop and deploy to bring real and sustainable change. The roadmap was developed as a plan to implement the following countermeasures:

Improved Measuring Framework – Includes better data, definitions and metrics, and creating a dashboard to measure success instead of the current practice of relying on a single measure.

Procurement Planning and Forecasting – Improve outreach, engagement and opportunity due to better planning and lead times.

Innovative Tools and Processes– Improve the balance between business diversity, reasonable risk, and best value in procurement.

Legislative and Policy Frameworks – Develop a consistent understanding of laws and policies, and coordinate state legislation to encourage small and diverse business participation and remove barriers in state contracting.

Engagement and Assistance– Improve both external and internal communication and assistance.

Diversity Culture and Framework – Build a community of practice in which business diversity is a clear priority, part of our culture and is supported through training, policy, funding, inclusion plans, state-sponsored assistance, and other means. Ensure everyone understands that diversity makes economic sense and it's how the state does business.

Washington Business Diversity - Proposed Roadmap

Roadmap Why: Objectives, Strategy

Diverse businesses represent about 1 percent (1%) of state purchasing and contracting – also known as procurement. This is far below current and historical established goals. A coalition of diverse communities has voiced concerns, and Gov. Inslee made a commitment to address the problem. The Governor formed his Business Diversity Subcabinet to investigate and take action to remedy problems, obstacles and barriers to diverse participation in state contracting opportunities. The subcabinet formed a work team that has documented the current state, analyzed gaps, developed counter-measures and produced a roadmap for change. This roadmap addresses how:

- Short-term countermeasures can be enacted.
- Mid-and long-term countermeasures can be further developed and put in place.

DRAFT

Washington Business Diversity - Proposed Roadmap

Roadmap What: Conceptual Timelines to Achieve Objectives*

- **By May 2016** – Take recommended Immediate Action Steps.
- **By May 2016** – Review current state laws and rules to identify conflicts and barriers to small and diverse business participation in contracting and purchasing; and develop a legislative strategy to remove barriers and conflicts, and encourage participation growth.
- **By May 2016** – Work in collaboration with community leaders the diverse business community to develop a statewide diverse business community engagement and assistance plan.
- **By November 2016** – Establish standards to measure diverse business participation.
- **By November 2016** – Establish and implement a framework that will enhance diversity planning for all agencies to use during budget forecasting exercises and beyond.
- **By November 2016** – Evaluate, develop and implement innovative tools and processes, including contracting methods that balance business diversity, reasonable risk, and best value.
- **By November 2016** – Expand the state procurement framework to include diversity in our culture and procurement and payment processes.

*Six- and 12-month time frames assume a start date of November 2015. Timelines are still being evaluated as more information becomes available.

Washington Business Diversity - Proposed Roadmap

Roadmap How: How to Implement

To better understand the current state as well as make informed and educated decisions, the work group recommends Subcabinet members attend an informational session to learn how current tools gather data, the impact of reporting caveats, and why they are important.

To implement the immediate action items, the work team recommends state agencies work with the state Office of Minority and Women's Business Enterprises (OMWBE).

To enable the mid- and long-term actions, the work team recommends that a future project work team comprised of subject matter experts be established and chartered by January 2016. The most efficient and effective work team would be:

- Led and sponsored by the Governor's Office.
- Be fully resourced for participating agencies. This includes adding positions as necessary. (additional FTEs – not absorbed by current staffing)
- Include team members representing different disciplines and functions doing the actual work on a full time basis. It is anticipated that an initial 12-month effort will need five to seven full-time equivalent positions. In particular, members would have knowledge, skills and abilities from the following areas: Policy, procurement, budget and management analysis, project management, information technology, legal and WSDOT American Society of Civil Engineers (ASCE).
- Empowered with the authority to establish opportunity teams, and manage the work and outcomes of each team.

Washington Business Diversity - Proposed Roadmap

Immediate Agency Actions

Immediate actions recommended for all state agencies – working in collaboration with OMWBE:

- Verify vendor information (tax identification number (TIN)) and sub-objects are entered correctly in financial systems (correlating countermeasure - improved measuring framework).
- Consider improving diversity in one market at a time. For example, such as the state's translations services (correlating countermeasure - improved measuring framework).
- Ensure that all considered firms are registered with the Washington Electronic Business Solution (WEBS), the state's online vendor registration system used by agencies to solicit bids and by businesses to compete for contracts (correlating countermeasure - improved measuring framework).
- Prior to solicitation, communicate with diverse firms by using WEBS to send out an email notification of a contracting or procurement opportunity (correlating countermeasure - improved measuring framework).
- When posting solicitations through WEBS, use the term "open" instead of "selective" (correlating countermeasure - improved measuring framework).
- Identify diverse businesses on contract that are not currently certified by OMWBE and encourage certification by sending businesses the recruitment email using OMWBE's template (correlating countermeasure - improved measuring framework).
- Review current veteran-owned businesses on contract that are not currently certified to see if they can also be certified by the state Department of Veteran Affairs (correlating countermeasure - improved measuring framework).
- When posting solicitations in WEBS, the state should include the contract amount (correlating countermeasures - improved measuring framework and community engagement).
- Consider hosting or co-hosting an OMWBE certification class in each agency for businesses currently doing business with or wanting to do business with your agency. To schedule a class, please email OMWBEreceptionist@omwbe.wa.gov (correlating countermeasure - community engagement).
- Continue coordinated communication efforts between subcabinet agencies. (correlating countermeasure - community engagement)
- Reach out to the diverse communities to identify the various communications mediums that small and diverse businesses use in addition to the Seattle Daily Journal of commerce (correlating countermeasure - community engagement).
- Have agency directors meet regularly with their procurement, outreach and diversity leads to review and collaborate on diversity issues, performance and progress.

Washington Business Diversity - Proposed Roadmap

Immediate Agency Actions

Immediate actions recommended for specific agencies:

- For the departments of Enterprise Services (DES), Veteran Affairs (DVA) and OMWBE – Incorporate or report separately, currently available purchase card data (correlating countermeasure - improved measuring framework).
- For DES, OMWBE, Washington State Department of Transportation (WSDOT) and other affected agencies – Incorporate or report separately, the currently available transportation and public works subcontractor data (correlating countermeasure - improved measuring framework).
- For DES and OMWBE – Ensure that all OMWBE-certified firms are enrolled into WEBS. There are approximately 1,100 certified firms not currently registered (correlating countermeasure - improved measuring framework).
- For DES and OMWBE – Develop training that addresses how to capture diversity data (importance of TIN, sub-objects, etc.), including caveats and why they are important (correlating countermeasure - improved measuring framework).
- For DES, WSDOT and other agencies with public works authority – Continue to move forward with agency-request legislation to reform small works roster and limited public works statute (correlating countermeasure – legislative and policy frameworks).

Washington Business Diversity - Proposed Roadmap

Improved measuring framework: Mid-term recommendations

Establish a framework of standards to measure diverse business participation. It is anticipated this will take 12 months to develop and includes:

- a. Examine available state certified diversity participation reporting to evaluate what other data could be included.
- b. Establish a **comprehensive** list of meaningful measures to capture, track and report business diversity and choose at least five measures to move forward. Consider using a dashboard approach with multiple measures to show more comprehensive and meaningful view of diversity. Here are 16 examples that represent input from the community and agencies:

- 1) Number of contracts awarded to diverse firms (current reporting uses only firms that are certified by OMWBE/DVA, and/or self-certified as small; and registered in WEBS are counted by statute).
- 2) Total dollars spent with diverse firms for state and federal (current reporting uses only firms that are certified by OMWBE/DVA, and/or self-certified as small; and registered in WEBS are counted by statute).
- 3) Count of certified diverse firms available to do business with the state by specific areas (break down by region, county, etc.).
- 4) Count by race (break down by region, county, etc.).
- 5) Count number of prime contractors who have inclusion plans for Job Order Contracting (JOC) who are / are not meeting their goals. (Break down by region, county, etc.).
- 6) Count of new diverse firms.
- 7) Count of new diverse firms getting first contract.
- 8) Count small business as its own metric.
- 9) Count of collaborative state-sponsored events and make events more meaningful and robust instead of having individual agencies putting on events.
- 10) Count of state sponsored events that meet their goal (e.g., new WEBS registrants, OMWBE certifications) so agencies aren't conducting events without a specific reason.
- 11) Review (count) intra-state certification duplicates to see where improvements can be made.
- 12) Count number of certified diverse firms not registered in WEBS.
- 13) Count number of diverse firms doing business with the state, but are not certified.

- 14) Count number of diverse firms on state master contracts who never get business.
 - 15) Count how many diverse firms on master contracts who are downloading bids, and of those, who responded, and of those, who are awarded.
 - 16) Count which contract winners are in Washington vs. out-of-state, and then break it down by diverse firms.
- c. Determine if there is an easier way to measure success, and review how successful states are measuring.
 - d. Determine a unique business identifier to match diverse businesses with contracts, financial transactions and other diverse measurements.
 - e. Determine if client service/provider data will be included when measuring diversity participation.
 - f. Develop a common glossary of business diversity terms. A working version exists now that also needs to include definitions for terms such as diverse spend, contract, provider, client and transaction. The glossary also should define and determine what is counted.
 - g. Determine if current intra-state certification processes are achieving desired outcomes. (Intra-state certifications may include city and county certifications, along with OMWBE, DVA and self-certified small businesses.)
 - h. Establish a common understanding and use of commodity codes.
 - i. Review the current sub-object lists, and determine if they are appropriate for categorizing diversity spend and implement changes if necessary.
 - j. Develop common data definition / attributes for gathering, tracking and reporting business diversity data.
 - k. Review different procurement areas to determine if it makes sense to apply the same measures to each. These include: Public works, transportation, information technology, general goods and services, and providers (client Services businesses vs. individuals).
 - l. Determine if and how to gather, track and report sub-contractor and supplier data.
 - m. Develop options for an interim solution to connect existing business diversity data sources for gathering, tracking and reporting data (e.g., TRAINS, Provider One, MIPS, etc.).
 - n. Re-examine how people get registered in WEBS to see if an “automated” system can be developed.
 - o. Propose appropriate staffing adjustments to successfully implement changes in process.

Improved measuring framework: Long-term recommendation

Establish a framework of standards to measure diverse business participation. Timeline to be identified and includes:

- a. Develop solution options or roadmap for a single solution for gathering, tracking and reporting business diversity data.

Washington Business Diversity - Proposed Roadmap

Procurement planning and forecasting: Mid-term recommendation

Establish and implement a diverse market framework for all agencies to use during budget forecasting exercises and beyond. It is estimated this will take 12 months to develop and includes:

- a. Develop a mechanism to enable state agency executive managers and program staff as well as budgeting, finance and procurement experts to work together to understand what projects are funded, what funds are available for contracting, and business diversity markets and opportunities.
 - 1) When biennium budgets are approved, share anticipated contracting and procurement budgets between an agency's budget, program, and procurement staff to boost agencies' ability to find and build diverse opportunities / markets.
 - 2) Once markets and opportunities are identified, reach out and work in partnership with the diversity community and other agencies to develop diverse firms / markets.
 - 3) Propose appropriate staffing adjustments to successfully implement changes in process.

Washington Business Diversity - Proposed Roadmap

Innovative tools and processes: Mid-term recommendation

Evaluate, develop and implement innovative contracting methods that balance business diversity, reasonable risk and best value. It is estimated this will take 12 months to develop and includes:

- a. Develop and adopt standard inclusion language for the different areas of procurement that would be added to all contracts going forward.
- b. Determine who is responsible for monitoring and managing diversity inclusion (data collection and data sources).
- c. Develop and adopt stronger contract management and monitoring processes to ensure diverse participation in performance-based and other contracting.
- d. Determine, at a policy level, the acceptable levels of risk in different areas of procurement: Public works, transportation, information technology, general goods and services, and providers (client services businesses vs. individuals). This includes defining what constitutes a reasonable risk.
- e. Once a policy is created, develop a risk assessment tool and supporting training to build understanding among state agencies regarding how to determine and manage vs. simply avoiding procurement risks. The training would be delivered to executive and program managers as well as staff involved in procurement.
- f. Develop procurement methods suitable for small business such as right-sized risk and contract terms.
- g. Research and make recommendations to adopt a state-sponsored risk pool, or similar options for small business insurance.
- h. Propose appropriate staffing adjustments to successfully implement changes in process.

Washington Business Diversity - Proposed Roadmap

Legislative and policy frameworks: Mid-term recommendation

Review current state laws and rules to identify conflicts and barriers to small and diverse business participation in contracts while concurrently building a coordinated roadmap of state legislation to remove barriers and conflicts and encourage participation growth. It is estimated this will take six months to develop and includes:

- a. Identifying state statutes and rules that are overly burdensome for small and diverse businesses and recommending changes.
- b. Examining RCW 43.19.725, .727 (see Appendix A) and WAC 326-30 to revise language regarding:
 - 1) How diversity is currently counted. For example, do diverse businesses need to be registered in WEBS and/or certified to be counted?
 - 2) Diversity tracking -- should this include spending that is not necessarily in the state's control such as some federal funds, grants and other pass through contracting?
 - 3) Language that specifically calls out system names should be removed.
- c. Determining which applicable federal and state laws conflict and / or are not aligned.
- d. Establishing clarity and consistency among agencies regarding their interpretation and application of federal and state laws.
- e. Obtaining a definitive understanding of what is required, what is allowed and what is prohibited for both Title VI and I-200 – and which law takes precedence and under what circumstances.
- f. Proposing appropriate staffing adjustments to successfully implement changes in process.
- g. Consider the potential benefits of an executive order that would outline the Governor's direction and expectation of agencies for diversity in procurement and public works
 - 1) The executive order might address why inclusion is a priority as well as agency accountability; education, outreach and public engagement; and program administration and operations.

Washington Business Diversity - Proposed Roadmap

Community engagement and assistance: Mid-term recommendation

Develop a statewide diverse business community engagement plan (in coordination with agencies and in collaboration with diverse community leaders to ensure the plan meets the needs of the diverse business community). It is estimated this will take six months to develop and includes:

- a. Training and education (both internal and external)
 - 1) Build comprehensive "diversity best practices," and include these in the core procurement training.
 - 2) Ensure existing tools that can be used to take advantage of opportunities to do business with small and diverse communities are included in mandatory training.
 - 3) Determine which state staff need training, including finance, budget, procurement and program staff.
- b. Communication
 - 1) Build partnerships with diverse communities.
 - 2) Simplify timely access to information about procurement processes.
 - 3) Develop a statewide communication plan on business diversity, for both internal and external audiences, with a clear owner (owner could be subcabinet, Governor's office, Results Washington or another entity).
 - 4) Formalize coordinated external and internal communication plans among agencies. Agencies that do more than (\$xx) in contracting and procurement need communication plans on business diversity, for both internal and external audiences.
 - i. Communication departments in these agencies need to coordinate with one another to ensure messaging is consistent agency to agency and with the statewide communication plan.
 - ii. Communication plans identify key messages and talking points; communication goals; desired outcome (opportunities and risks to be aware of); goals and objectives; audiences; and communication tools and strategies that will be used.
 - 5) Coordinate to make information about certification, certification requirements and benefits more accessible.
 - 6) Explore opportunity to get WEBS in front of businesses sooner and more often. For example, this could be part of:
 - i. The licensing process
 - ii. Other logical processes, like when businesses file taxes, every agency procurement, etc.
 - 7) Review online presence – is the web the best tool? What other tools are needed?
- c. In-reach/outreach
 - 1) Build partnerships with diverse communities.

- 2) Coordinate outreach events among agencies - fewer events with more accessible times, places and business value added.
 - 3) Identify best or additional opportunities.
 - 4) Coordinate with the Governor's Office of Regulatory and Innovation Assistance Small Business Liaisons. ORIA could be a point of contact for diverse business communities.
- d. Propose appropriate staffing adjustments to successfully implement changes in process.

DRAFT

Washington Business Diversity - Proposed Roadmap

Diversity culture and framework: Mid-term recommendation

Expand the state procurement framework to include diversity in our culture and processes. It is estimated this will take 12 months to develop and includes:

- a. Clearly articulate diversity as part of the state's core mission and each agency's core mission.
- b. Develop language that emphasizes the importance of including diversity in procurement. Add this as a core competency training and expectation for all agency executives, mid-level executives, and financial, budget and procurement staff positions.
- c. Develop and implement performance expectations and training regarding diversity in procurement for all agency executives, mid-level executives, and financial, budget and procurement staff.
- d. Develop and implement staff requirements for internal agency procurement diversity infrastructure (full-time employees and/or programs).
- e. Develop and implement a requirement for prime contractors and subcontractors to include diversity in their selection of lower tiered subcontractors.
- f. Develop and implement mandatory uniformity across state agency websites with regard to procurement diversity. Include links, how to, FAQs, who to call. Must be accessible (ADA compliant and in multiple languages).
- g. Empower agency staff
 - 1) Address budget issues including travel restrictions that may be preventing procurement staff from meeting firms face-to-face.
 - 2) Address trust and lack of skills when supervisors and managers are reluctant to allow staff to be out of the office to meet firms face-to-face.
 - 3) Address perception of increased workload. Including diversity and/or meeting firms face-to-face is a necessary and vital investment in our state and local economies.
 - 4) Include diversity expectations in position description forms and evaluations. Address lack of review and accountability.
 - 5) Provide clear understanding and training of what is permissible under 1-200 and what is required under Title VI. Set people up for success.
 - 6) Empower human resources staff with training and education so they understand the best people to hire.
 - 7) Clarify timely permissible communication with vendors with respect to expectations in procurement ethics.
- h. Shift focus from regulatory/enforcement to partnership/relationships, and provide training to executive, management and line staff.
- i. Procurement reform opened the cage, but no one is stepping out. It's been at least two generations since I-200. Ensure sustainability by capturing historical knowledge and applicable pre I-200 business assistance practices and include them as part of the core training.

- j. Develop and implement a state-sponsored business diversity procurement assistance program using the Model Plan for Technical Assistance as a vehicle (RCW 43.19.725, .727, see Appendix A.)
- k. Develop and recommend policy changes to include diversity when exceptions to competitive contracting are used.
- l. Propose appropriate staffing adjustments to successfully implement changes in process.

DRAFT

Background: Determining the current state

To determine the current state, a work team supporting the Business Diversity Subcabinet:

- Interviewed dozens of people within six key agencies that represent two-thirds of state contract spending
- Collected hundreds of documents
- Mapped out multiple processes
- Reviewed numerous policies, procedures and laws
- Engaged and sought feedback from the community, including two community listening sessions

From that research here is a high-level description of trends the team found. This is not an all-inclusive list.

1. For just the six agencies looked at, there are 25 procurement, contracting, payment, and reporting systems.
2. There is no consistent way to capture the data for diverse spend.
3. The use of financial sub-object codes is inconsistent. This is important because they are used to categorize state expenditures and calculate diverse spend and participation reports.
4. Each agency has a different procurement structure when it comes to purchasing and contracting.
5. Not all agencies include diversity in procurement planning.
6. There isn't consistent coordinated communication between finance, budget, procurement, contracting and the programs related to forecasting and planning which could affect diversity opportunities.
7. Not all agencies use a process to identify certified firms to do business with.
8. Not all agencies have a procurement presence (internal or external) on their website.
9. There are different rules when using Federal funds for procurement.
10. There is not a standard practice for inclusion plans and their use is limited.
11. Procurement diversity training for staff is not a common practice.
12. Not all agencies have a diversity program for procurement.

13. Vendor selection happens at multiple levels, both inside and outside the agency –agencies do not always have a mechanism to decide who is selected.
14. The multiple Federal and state laws and rules that cover contracting and procurement add to the confusing and inconsistent experience for the small and diverse community and agencies.

In conclusion, although there are similar processes, there is no consistency within each agency for procurement, payment, contracting, reporting and diversity. Diversity planning, training and programs -- where they exist – are inconsistent, and diversity is most often seen as an “extra” or “add-on,” rather than recognized as a priority and core mission. Even laws that affect diversity in state contract are interpreted differently agency to agency.

To change this current state, a strategic, clear, consistent and comprehensive approach that is based on a common understanding of the issue is needed.

DRAFT

CONCEPTUAL TIMELINE FOR DEVELOPING COUNTERMEASURES IN ORDER OF IMPORTANCE

Nov 2015	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov 2016
Immediate Action Steps November 2015 – May 2016												
Establish a framework of standards to measure diverse business participation November 2015 – November 2016												
Establish and implement a diverse market framework for all agencies to use during budget forecasting exercises and beyond. November 2015 – November 2016												
Evaluate, develop and implement innovative contracting methods. November 2015 – November 2016												
Review current RCWs and WACs build a coordinated roadmap of legislation. November 2015 – May 2016												
Develop a statewide diverse business community engagement plan. November 2015 – May 2016												
Expand the state procurement framework to include diversity in our culture and processes. November 2015 – November 2016												

The work team believes the above countermeasures can be developed and readied for initial deployment concurrently.

Timelines are still being evaluated as more information becomes available.

Note: The above does not reflect the long-term countermeasure to develop solution options or roadmap for a single solution for gathering, tracking and reporting business diversity data

APPENDIX A

Subcabinet members

Chris Liu, Subcabinet Chair, Director, Department of Enterprise Services

Joby Shimomura/David Postman, Chief of Staff, Office of the Governor

Kelly Wicker, Deputy Chief of Staff, Office of the Governor

RaShelle Davis, Policy Advisor, Office of the Governor

Kelly Ogilvie, Senior Policy Advisor, Office of the Governor

Teresa Berntsen, Interim Director, Office of Minority and Women's Business Enterprises

Dan Pacholke, Secretary, Department of Corrections

Dorothy Teeter, Director, Health Care Authority

Kevin Quigley, Secretary, Department of Social and Health Services

Joel Sacks, Director, Department of Labor and Industries

Lynn Peterson, Secretary, Washington State Department of Transportation

Uriel Iniguez, Executive Director, Washington State Commission on Hispanic Affairs

Ed Prince, Executive Director, Washington State Commission on African-American Affairs

Michael Itti, Director, Commission on Asian Pacific American Affairs

Lourdes E. Alvarado-Ramos, Director, Department of Veterans Affairs

Laura Watson, Senior Assistant Attorney General, Washington Attorney General's Office

Community liaisons

Hayward Evans, Civil Rights Coalition representative and President of Washington State African American Political Action Committee

Charles James, Civil Rights Coalition representative and Co-Founder of Martin Luther King Jr. Foundation and MLK Memorial

Frank Lemos, Civil Rights Coalition representative and King County Commissioner for the Washington State Commission on Hispanic Affairs

Phase 2 work group members

Lynne McGuire, Deputy Director, Department of Enterprise Services

Teresa Berntsen, Acting Director, Office of Minority and Women's Business Enterprises

Cheryl Smith, Senior Policy Advisor, Department of Commerce

Susan Lucas, Chief Operations Officer, Health Care Authority

Roger Millar, Deputy Secretary, Department of Transportation

Patricia Lashway, Assistant Secretary, Services & Enterprise Support, Department of Health and Human Services

Gary Condra, Deputy Director, Department of Veterans Affairs

Randi Warick, Deputy Director, Department of Labor and Industries

Jody Becker-Green, Deputy Secretary, Secretary, Department of Corrections

APPENDIX B**RCW 49.60.400 - Discrimination, preferential treatment prohibited.**

- (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- (2) This section applies only to action taken after December 3, 1998.
- (3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.
- (4) This section does not affect any otherwise lawful classification that:
 - (a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or
 - (b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or
 - (c) Provides for separate athletic teams for each sex.
- (5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.
- (6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.
- (7) Nothing in this section prohibits schools established under chapter [28A.715](#) RCW from:
 - (a) Implementing a policy of Indian preference in employment; or
 - (b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.
- (8) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.
- (9) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.
- (10) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

[2013 c 242 § 7; 1999 c 3 § 1 (Initiative Measure No. 200, approved November 3, 1998).]

RCW 43.19.725**Small businesses — Increased registration in enterprise vendor registration and bid notification system — Increased contracts and purchasing — Model plan — Technical assistance — Recordkeeping.**

(1) The department must develop a model plan for state agencies to increase: (a) The number of small businesses registering in the state's enterprise vendor registration and bid notification system; (b) the number of such registered small businesses annually receiving state contracts for goods and services purchased by the state; and (c) the percentage of total state dollars spent for goods and services purchased from such registered small businesses. The goal of the plan is to increase the number of small businesses receiving state contracts as well as the percentage of total state dollars spent for goods and services from small businesses registered in the state's enterprise vendor registration and bid notification system by at least fifty percent in fiscal year 2013, and at least one hundred percent in fiscal year 2015 over the baseline data reported for fiscal year 2011.

(2) The department, the department of transportation, and institutions of higher education as defined in RCW [28B.10.016](#) may adopt the model plan developed by the department under subsection (1) of this section. If the agency does not adopt the model plan, it must establish and implement a plan consistent with the goals of subsection (1) of this section.

(3) To facilitate the participation of small businesses in the provision of goods and services to the state, including purchases under chapters [39.26](#) and [43.105](#) RCW, the director, under the powers granted under this chapter, and the department, the department of transportation, and institutions of higher education as defined in RCW [28B.10.016](#) operating under delegated authority granted under this chapter or RCW [28B.10.029](#), must give technical assistance to small businesses regarding the state bidding process. Such technical assistance shall include providing opportunities for the agency to answer vendor questions about the bid solicitation requirements in advance of the bid due date and, upon request, holding a debriefing after the contract award to assist the vendor in understanding how to improve his or her responses for future competitive procurements.

(4)(a) The department, the department of transportation, and institutions of higher education as defined in RCW [28B.10.016](#) must maintain records of state purchasing contracts awarded to registered small businesses in order to track outcomes and provide accurate, verifiable information regarding the effects the technical assistance under subsection (3) of this section is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

(b) The department may provide assistance to other agencies attempting to maintain records of state purchasing contracts awarded to registered small businesses for the purposes described under (a) of this subsection.

[2012 c 224 § 26; 2011 c 358 § 2.]

Notes:

Effective date -- 2012 c 224: See RCW [39.26.900](#).

Findings -- Intent -- 2011 c 358: "The legislature finds that it is in the state's economic interest and serves a public purpose to promote and facilitate the fullest possible participation by Washington businesses of all sizes in the process by which goods and services are purchased by the state. The legislature further finds that large businesses have the resources to participate fully and effectively in the state's purchasing system, and because of many factors, including economies of scale, the purchasing system tends to create a preference in favor of large businesses and to disadvantage small businesses. The legislature intends, therefore, to assist, to the maximum extent possible, small businesses to participate in order to enhance and preserve competitive enterprise and to ensure that small businesses have a fair

opportunity to be awarded contracts or subcontracts for goods and services purchased by the state. The legislature recognizes the need to increase accountability for the state's procurement and contracting practices. The legislature, therefore, intends to encourage all state agencies to maintain records of state purchasing contracts awarded to registered small businesses. The legislature further recognizes that access to a modernized system that categorizes a state business by such factors as its type and size, is an essential tool for receiving accurate and verifiable information regarding the effects any technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state." [2011 c 358 § 1.]

RCW 43.19.727

Small businesses — Effects of technical assistance — Reports — Web-based information system.

(1) By November 15, 2013, and November 15th every two years thereafter, the department, the department of transportation, and institutions of higher education as defined in RCW [28B.10.016](#) shall submit a report to the appropriate committees of the legislature providing verifiable information regarding the effects the technical assistance under RCW [43.19.725](#)(3) is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

(2) By December 31, 2013, the department, the department of transportation, and institutions of higher education as defined in RCW [28B.10.016](#) must use the web-based information system created under subsection (3)(a) of this section to capture the data required under subsection (3)(a) of this section.

(3)(a) The department, in consultation with the department of transportation and the department of commerce, must develop and implement a web-based information system. The web-based information system must be used to capture data, track outcomes, and provide accurate and verifiable information regarding the effects the technical assistance under RCW [43.19.725](#)(3) is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state. Such measurable data shall include, but not be limited to: (i) The number of registered small businesses that have been awarded state procurement contracts, (ii) the percentage of total state dollars spent for goods and services purchased from registered small businesses, and (iii) the number of registered small businesses that have bid on but were not awarded state purchasing contracts.

(b) By September 1, 2012, the department, in collaboration with the department of transportation, shall submit a report to the appropriate committees of the legislature providing any recommendations for needed legislation to improve the collection of data required under (a) of this subsection.

(c) By December 31, 2013, the department must make the web-based information system available to all state purchasing agencies.

(d) The department may also make the web-based information system available to other agencies that would like to use the system for the purposes of chapter 358, Laws of 2011.

[2012 c 224 § 27; 2011 c 358 § 3.]

Notes: Effective date -- 2012 c 224: See RCW 39.26.900. Findings -- Intent -- 2011 c 358: See note following RCW 43.19.725.

Resulting Legislation from HB 1328

- RCW 39.04.155 Small Works
- RCW 60.28.051 Duties of Dispersing Office
- RCW 39.08.010 Bond Requirements
- RCW 39.12.040 Prevailing Wage

**RCW 39.04.155 - Small works roster contract procedures—Limited public works process—
Definition. *** CHANGE IN 2015 *** (SEE 5024.SL) *****

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

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

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the *department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the *department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of

performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

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

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

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

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars

annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the *department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the *department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109. [2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

RCW 60.28.051 - Duties of disbursing officer upon completion of contract.

Upon completion of a contract, the state, county, or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he or she has received from the department of revenue, the employment security department, and the department of labor and industries certificates that all taxes, increases, and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in each department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

[2009 c 432 § 8; 2007 c 210 § 2; 1992 c 223 § 4.]

Notes: Report -- 2009 c 432: See RCW 18.27.800. Effective date -- 1992 c 223: See note following RCW 39.76.011. Waiver of rights, construction -- Application -- 1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 39.08.010 - Bond required — Conditions — Retention of contract amount in lieu of bond.

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

- (i) Faithfully perform all the provisions of such contract;
- (ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and
- (iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is conditioned on the payment of such taxes, increases, and penalties.

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

- (2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.
- (3) On contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.
- (4) For contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.
- (5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

[2013 c 113 § 2. Prior: 2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159; prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Notes: Intent -- Finding -- 2007 c 218: See note following RCW 1.08.130. Construction -- Severability -- 1975 1st ex.s. c 278: See notes following RCW 11.08.160. State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

RCW 39.12.040 - Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor's registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in

RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]