

SBCTC PUBLIC WORKS CONTRACTING

Facility Professional Services

Janet Jansen, AIA, EAS Program Manager

Alissa North, Contracts Program Manager

OFC Meeting May 18, 2023

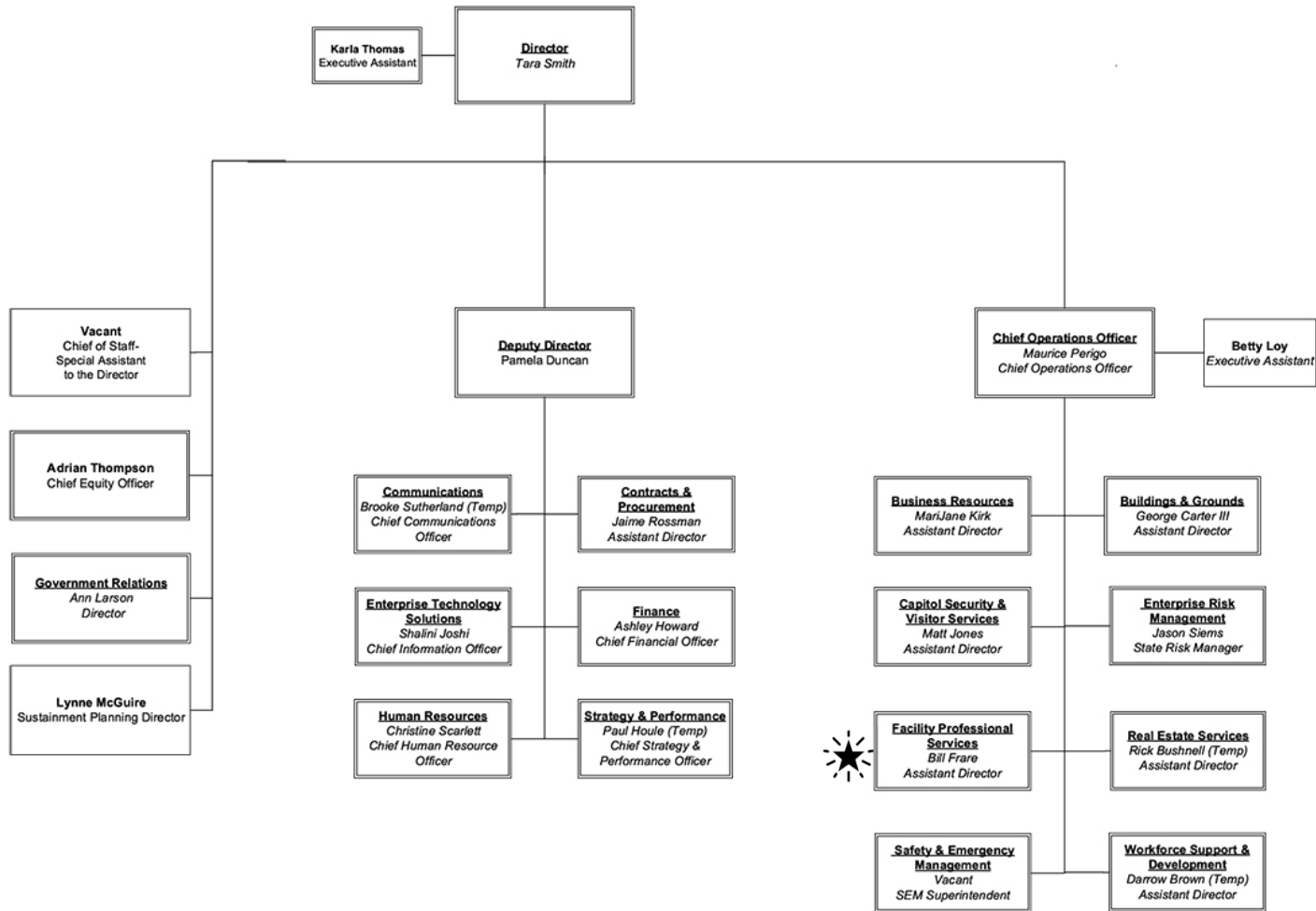


Washington State
DEPARTMENT OF
ENTERPRISE SERVICES

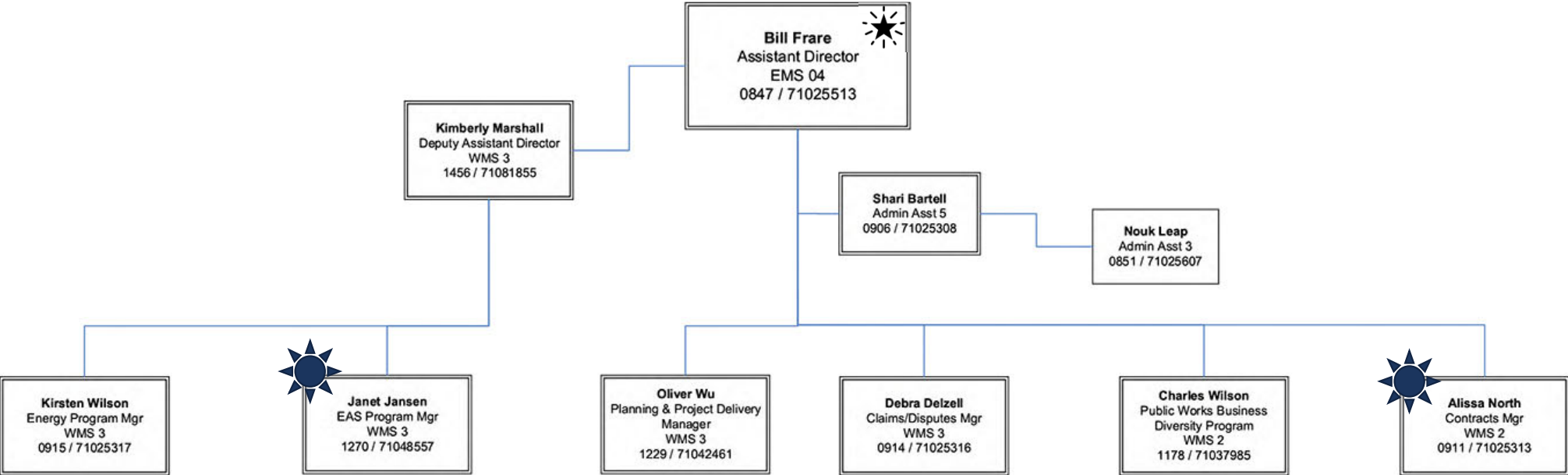
AGENDA

- DES - Department of enterprise Services
 - FPS - Facility Professional services
 - EAS - Engineering Architectural Services
 - FPS - Contracts
- RCW 39.04 Public Works Procurement
 - Definition of "Public Works"
 - Different Types of "Public Works" Procurement Processes
 - Required Legal Considerations of "Public Works" Contracting
- Other updates
 - On-line Bidding with Bonfire
 - Roles and Responsibilities
 - Different Types of "Public Works" Procurement Processes
 - Small Works Roster Legislative changes

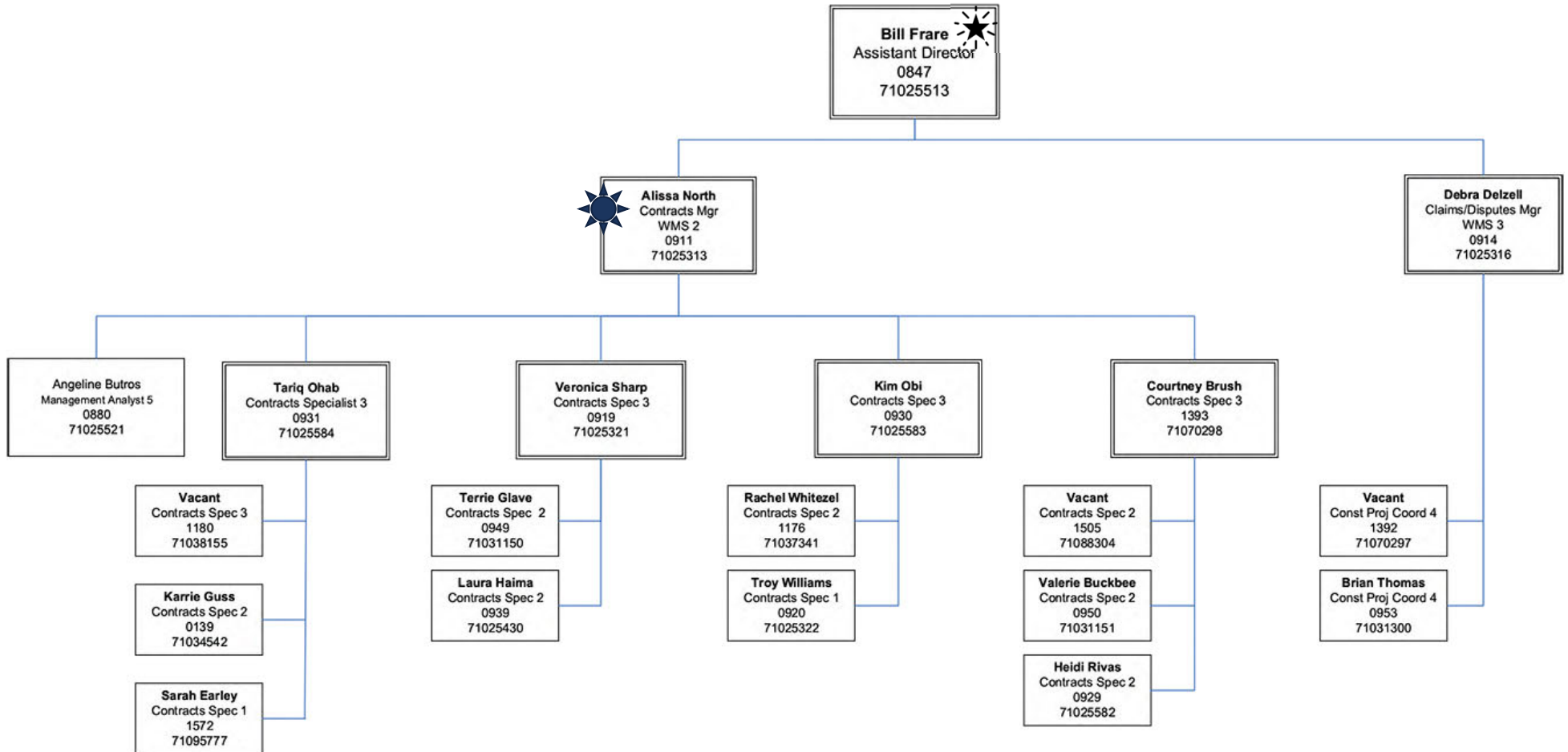
DES LEADERSHIP ORGANIZATION CHART



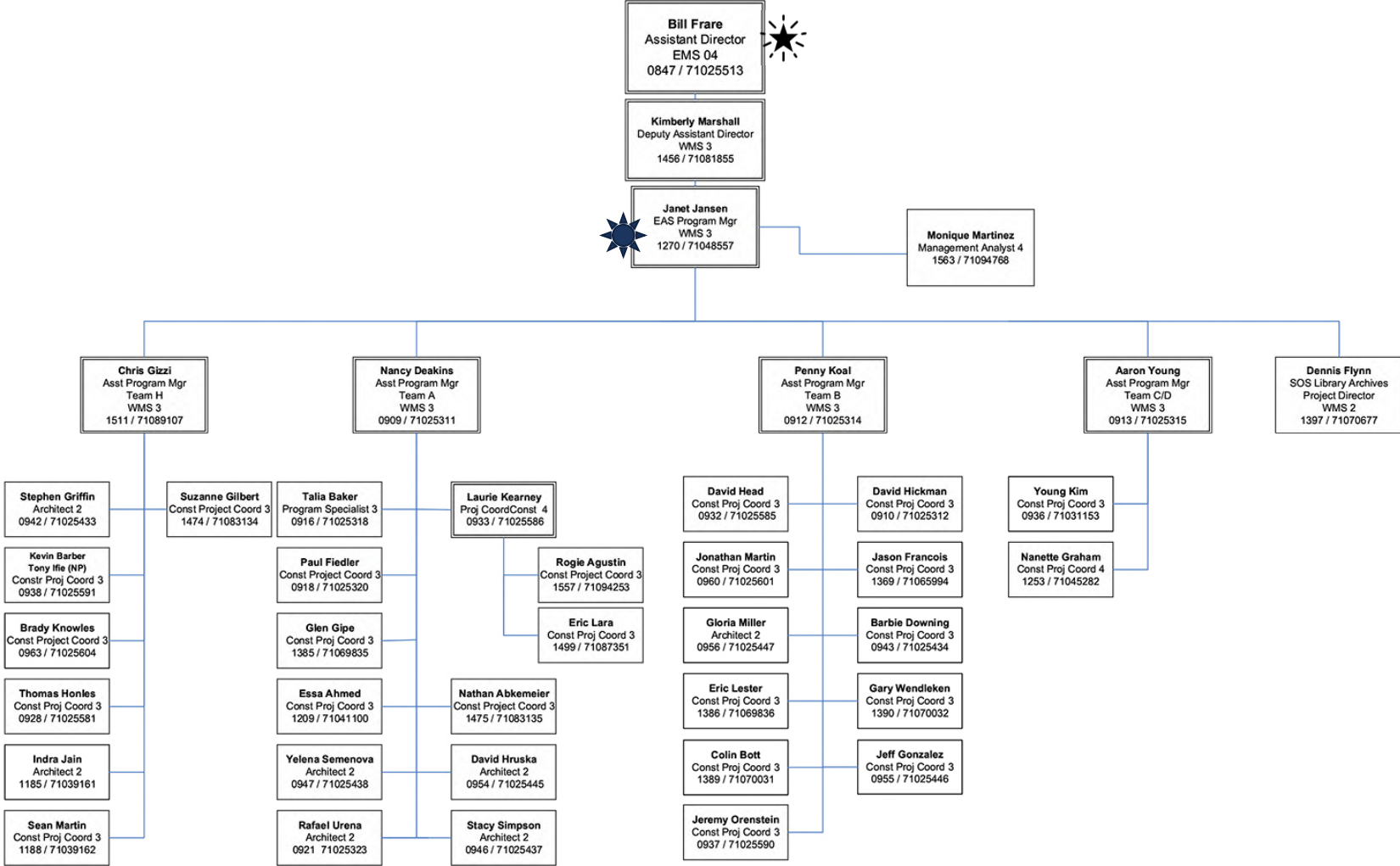
FPS ORGANIZATION CHART



CONTRACTS ORGANIZATION CHART



EAS ORGANIZATION CHART



FACILITY PROFESSIONAL SERVICES (FPS)

Our mission

- We provide professional public works project management, energy efficiency and facility planning services to effectively meet the needs of our customers in support of their service to Washington.

Our vision

- To be trusted leading experts in public works project management in Washington State.

Our values

- The FPS division is united by a set of values that drive our decisions, guide our actions, and determine how we interact with others.

•**Diversity, Equity and Inclusion:** We believe in a culture that intentionally includes those from historically disadvantaged groups and supports people from all backgrounds and life experiences. We create opportunities for everyone to participate in an environment where they are included, valued, treated fairly, and enabled to do their best work.

•**Sustainability:** The services we provide balance the environmental, economic, and social impacts of today with consideration of our state's long-term legacy in order to meet the needs of future generations.

•**Stewardship:** We listen to understand the needs of our clients, partners, and stakeholders to effectively plan, design, and construct improvements for the ongoing care and custody of public facilities, while responsibly applying public works laws to ensure an open, competitive, fair, and accessible process.

•**Collaboration:** We believe we can accomplish more by working together, so we communicate openly and participate fully, honoring the contributions of each team and team member. We value the contributions of our clients, partners, and stakeholders in decision making in order to foster shared success.

PUBLIC WORKS 101

RCW 39.04 PUBLIC WORKS

Definitions (RCW 39.04.010)

(4) "Public work" means all work, construction, alteration, repair, or improvement **other than ordinary maintenance**, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

All public works, including **maintenance when performed by contract** shall comply with "Prevailing Wage for Public Works" (RCW 39.12).

"Public Work" does not include work, construction, alteration, repair, or improvement performed for Public Stadiums (RCW 36.102.060(4,7,8)).

SBCTC colleges cannot hire or contract directly with any contractors, architects and engineers. All work where capital funds are used must be done so with DES FPS.

RCW 39.04 PUBLIC WORKS

Types of Public Works Contracting:

Public Works Procedures (RCW 39.04.155)

- Limited Public Works (LPW)– \$0- \$50,000
- Small Public Works– \$50,000- \$350,000 **May Change with new SWR law – 2024 ***
- Large Public Works– >\$350,000 – Design-Bid-Build

Emergency Public Works

Alternative Public Works (RCW 39.10)

- Design-Build (RCW 39.10.300-330)
- General Contractor/Construction Manager- GCCM (RCW 39.10.340-410)
- Job Order Contracting (RCW 39.10.420-460)

RCW 39.04 PUBLIC WORKS

SMALL WORKS PROCEDURES (RCW 39.04.155)

Small Works Procedure Requirements: (RCW 38.04.155)

Requires Use of Small Works Roster (RCW 39.04.155(2)b)

- Contractors request to be on the Small Works Roster and are properly licensed or registered to perform work in WA state.

Equitably Distribute Opportunities (RCW 39.04.155(6)a)

- Agency may not favor a contractors on the small works roster over other contractors on the same roster.

Breaking Up or Phasing is prohibited to avoid Maximum Dollar Limits for Small Works Contracting or JOC (RCW 39.04.155(4))

Any projects done by only college staff cannot exceed \$45,000. for one trade or \$90,000. total, staff costs plus materials. Not recommended!!

PUBLIC WORKS

SMALL WORKS PROCEDURES (RCW 39.04.155)

RCW 39.04 PUBLIC WORKS

SMALL WORKS PROCEDURES (RCW 39.04.155)

Small Works Procedure Requirements: (RCW 38.04.155)

- Architectural or Engineering Services and Approvals may be required for code compliance (RCW 39.04.155(2)c and OMC 12.02, Sec 1.110)
- Scope and Estimate of planned work required. (RCW 39.04.155(2)c)
 - Plans, Specifications, and Estimate Required (RCW 39.04.020)
 - Plans, Specifications, Estimates, Schedules, Reports and Studies must be stamped and sealed by a registered and licensed Architect or Engineer. (RCW 18)
- Public notice required for work exceeding \$25,000
 - At least 15 calendar days in legal newspaper PRIOR TO BEGINNING WORK.

RCW 39.04 PUBLIC WORKS

SMALL WORKS PROCEDURES (RCW 39.04.155)

Limited Public Works Contracting– less than \$50,000 (RCW 39.04.155(3)a)

- Authorized by Small Public Works Procedures
- Electronic or written bids may be acceptable per Agency policy (RCW 39.04.155(3)(b))
- Solicit bids from at least 3 contractors using Small Works Roster (RCW 39.04.155(3)(b))
- Award to the Lowest Responsible Bidder (RCW 39.04.155(3)(b))
- No requirement for Plans, Specifications, or Estimates (RCW 39.04.155)
- Agency may waive Public Works Bonding Requirements (RCW 39.04.155)
- **May Change with new SWR law - 2024**

RCW 39.04 PUBLIC WORKS

SMALL WORKS PROCEDURES (RCW 39.04.155)

Small Public Works Contracting- \$50,000-350,000 (RCW 39.04.155(2)c)

- Solicit bids from at least 5 contractors using Small Works Roster.
- All Public Works Contracting Law Requirements apply.

May Change with new SWR law – 2024 *

Small Public Works Contracting- \$250,000-350,000 (RCW 39.04.155(2)c)

- Solicit bids from at least 5 contractors using Small Works Roster.
- Agency must notify all the remaining contractors on Small Works Roster.
- All Public Works Contracting Law Requirements apply.

• May Change with new SWR law – 2024 *

RCW 39.04 PUBLIC WORKS

Other Public Works Contracting Procedures:

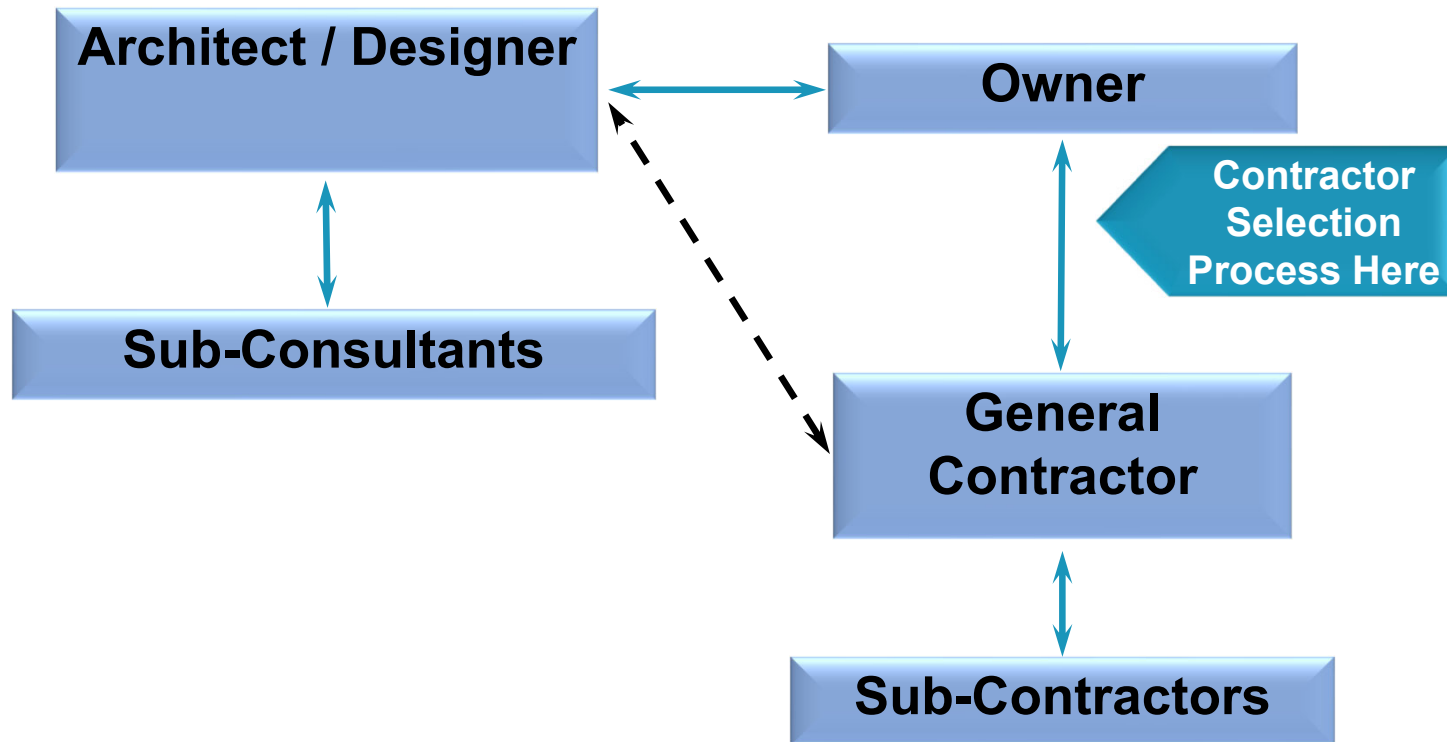
Large Public Works (Projects > \$350,000)

- Commonly referred to as "Traditional Design-Bid-Build"
- Requires Architectural and Engineering Services

Alternative Public Works (RCW 39.10)

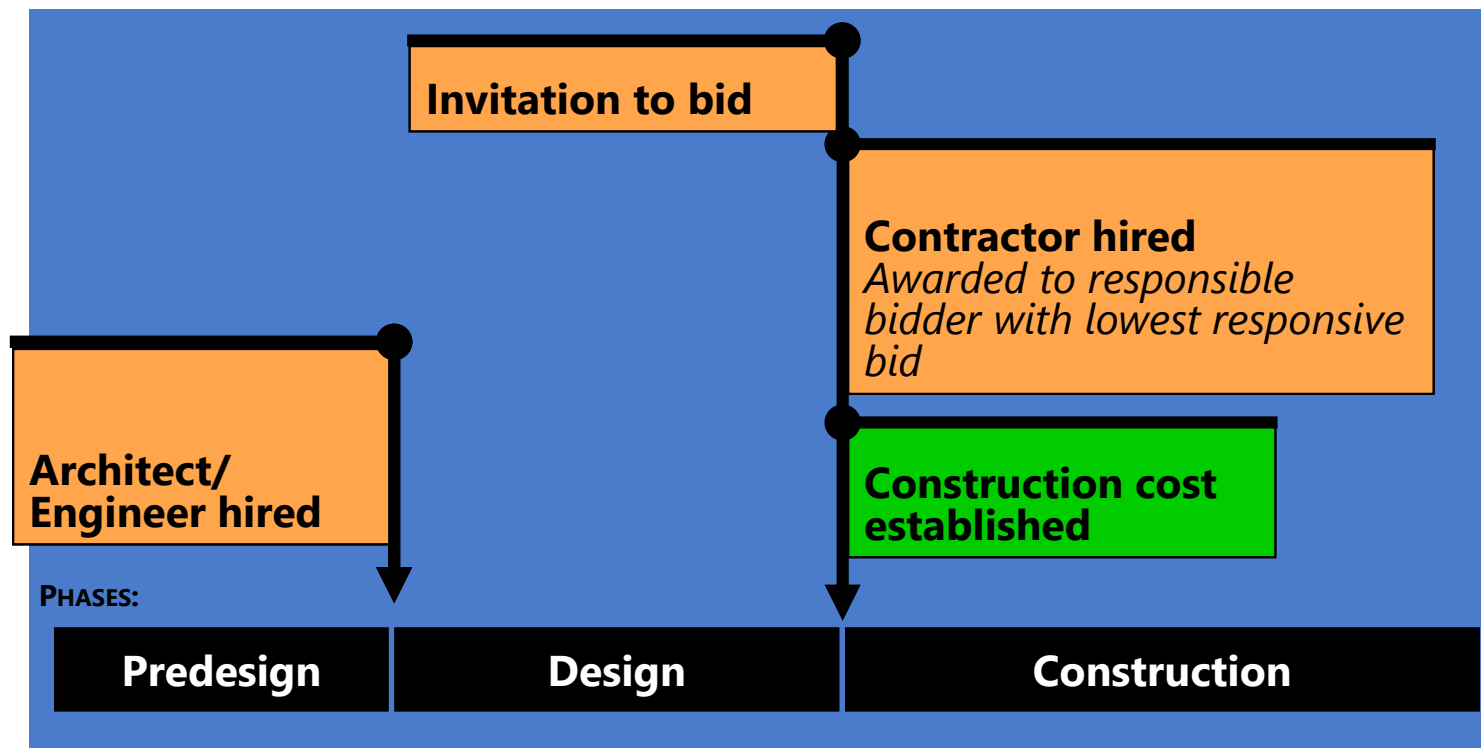
- Design-Build (RCW 39.10.300-330)
- General Contractor/Construction Manager (GC-CM) (RCW 39.10.340-410)
- Job Order Contracting (RCW 39.10.420-460)

DESIGN-BID-BUILD



DESIGN-BID-BUILD

Separates design and construction, used for projects of any size



Source: JLARC analysis of public works contracting procedures, Sunset Review, Dec. 2012.

RCW 39.10 ALTERNATE PUBLIC WORKS

JOB ORDER CONTRACTING (RCW 39.10.420-460)

What is a Job Order Contract (or JOC)?

- A competitively bid fixed-price Public Works Contract.
- Contractor and Owner scope the project within budget (<\$500,000).
- Projects are delivered on a “work order” basis and involve minimal design effort.
- JOC Contractor cannot self-perform more than 10% of the work
- JOC Contractor must subcontract large portion of the work.
- JOC Projects are completed 10-20% faster than other Public Works.

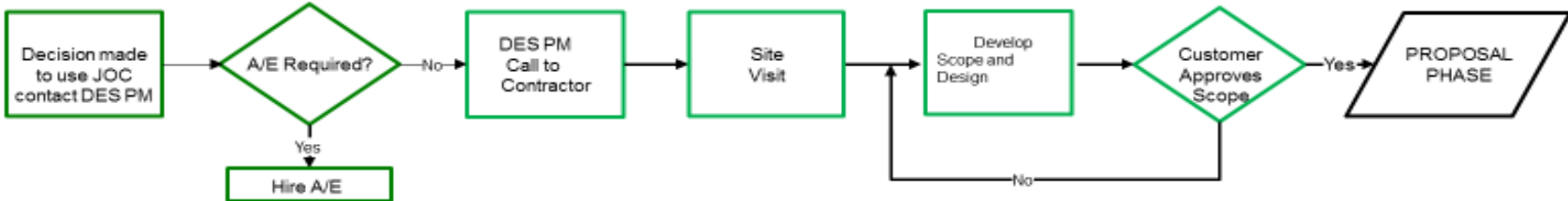
JOC projects are beneficial to the Agency due to early Contractor involvement.

There is a premium paid for JOC work!

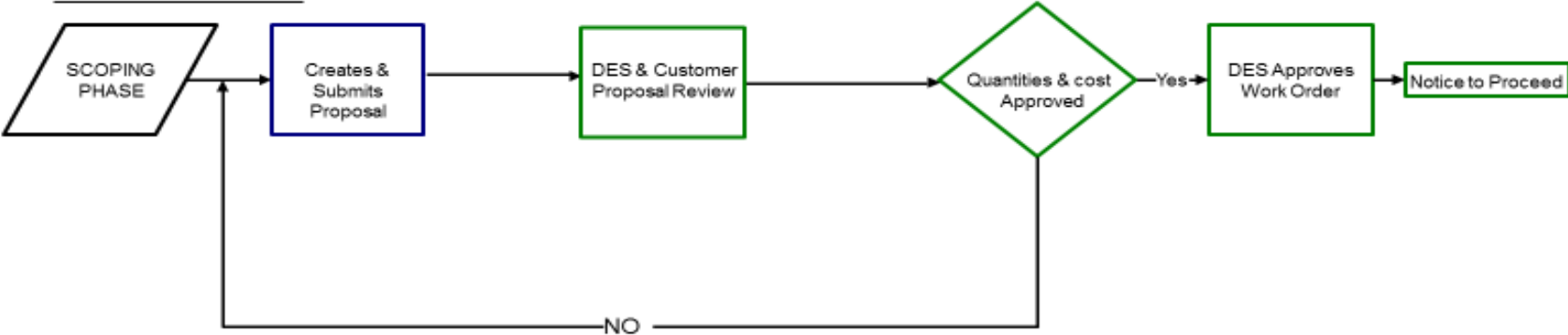
JOB ORDER PROCESS

JOC Process Flowchart

SCOPING PHASE



PROPOSAL PHASE



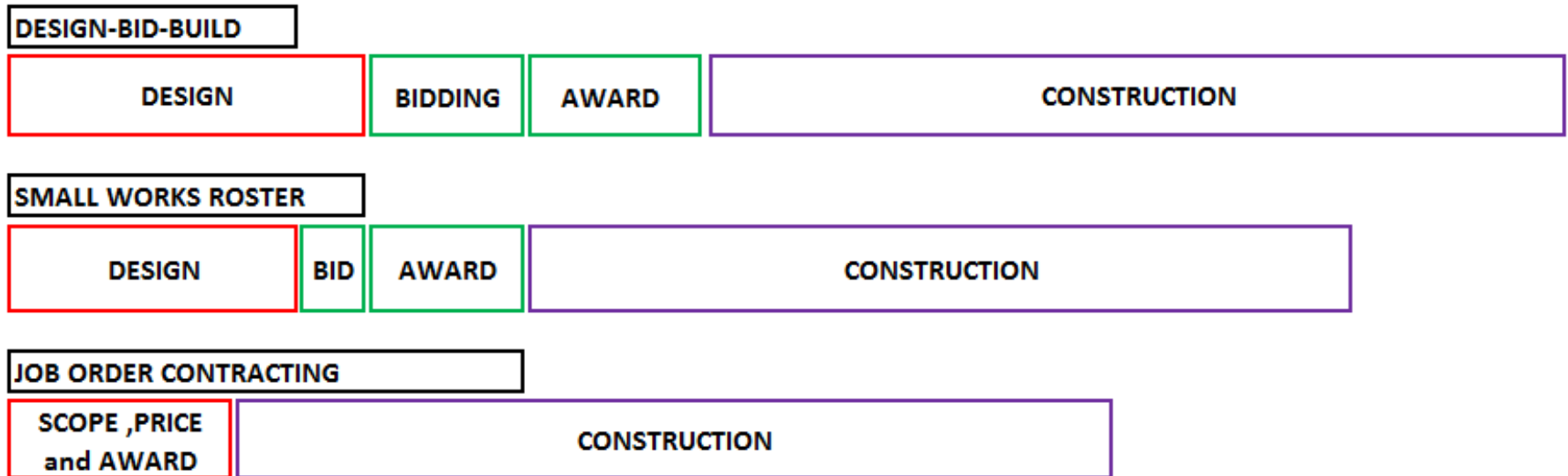
PROJECT DELIVERY COMPARISON

Project Delivery Options

Option	\$ Limits	When to Use	Advantages	Disadvantages	RCW Ref.
Design-Bid-Build	—	When other options don't make sense	Competition that most contractors understand	Contractor not a participant in design	39.04
Job Order Contract (JOC)	\$500k (w/COs)	Need it fast Simple with few trades	Convenient	Pay for convenience	39.10. 420-460
Small Works Roster	\$350k (w/COs)	Small, simple projects	<ul style="list-style-type: none"> • Less design • Shorter time 	Low bidder interest can result in few or no bids	39.04. 155

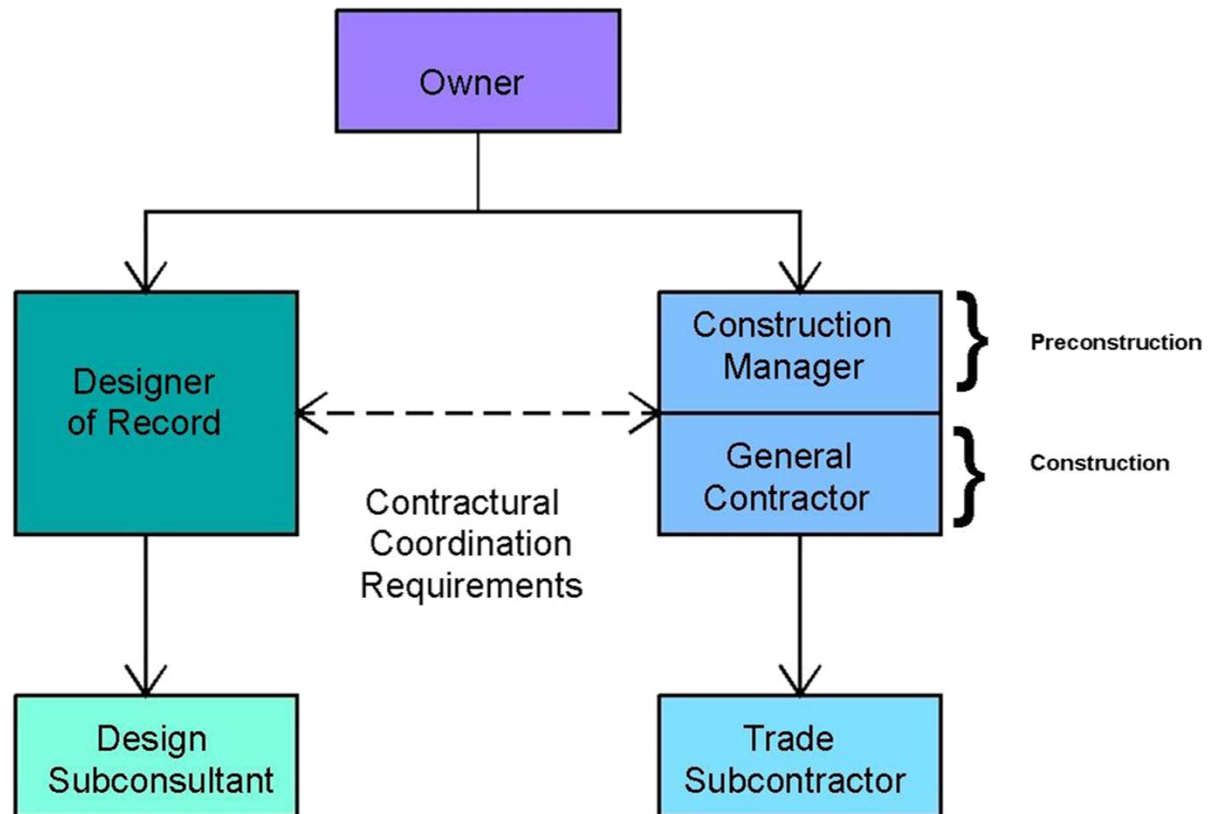
RELATIVE SCHEDULE COMPARISONS BETWEEN CONTRACTING METHODS

Assume: \$200,000 Construction Cost + Non-Elective
Change Orders/Basic Design Requirements/120 Day
Construction Duration



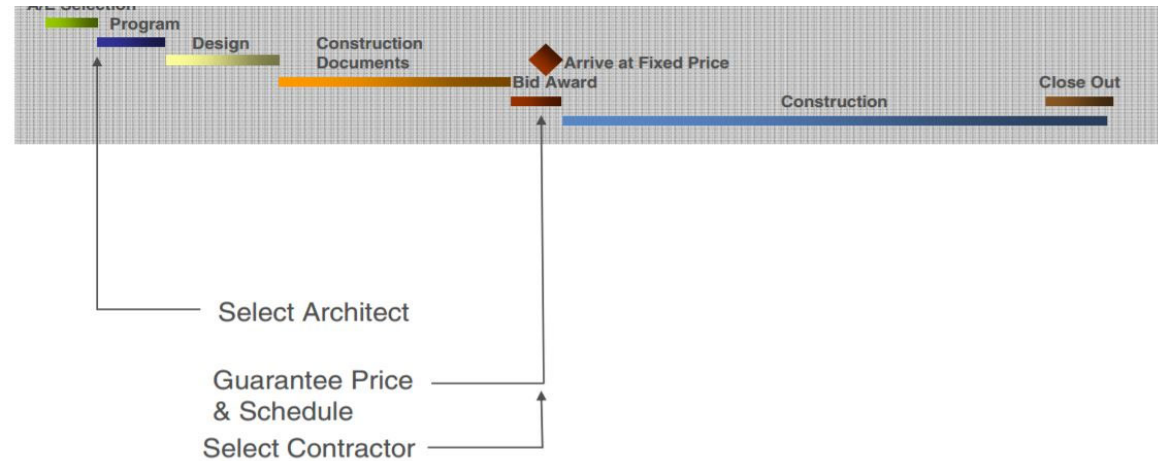
GC/CM DELIVERY METHOD

With the GC/CM project delivery method, the design firm and construction firm are both contracted to the owner.

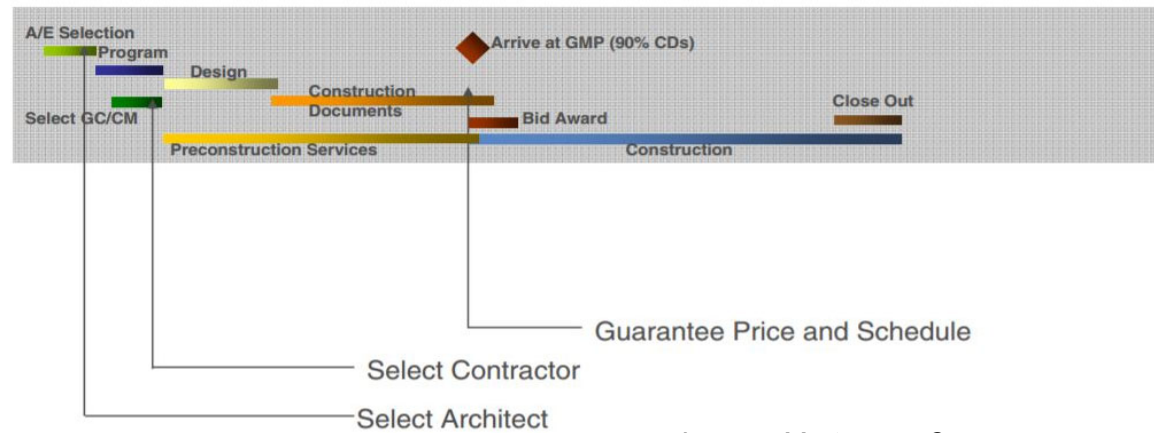


METHOD SCHEDULE COMPARISON

Design Bid Build



GC/CM



Images Mortenson Co.

RCW 39.04 PUBLIC WORKS

Emergency Public Works Procedures (RCW 39.38 and 39.04.280(3))

"Emergency" means unforeseen circumstances beyond the Agency's immediate control, which:

- (a) Presents a real, immediate threat to the proper performance of essential functions; or
- (b) Will likely result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken.

Emergency Public Works Contract may waive Competitive Bidding,

- Agency must prepare written findings within 2 weeks following an Award of Contract (or contractor selection).
- Publication of description and cost estimate within 7 days after commencing work
- SBCTC need to use a letter format found online for all Emergency Declarations

RCW 39.04 PUBLIC WORKS

Emergency Public Works Procedures (RCW 39.38 and 39.04.280(3))

Emergency Declaration Required

If an emergency exists, a designated person(s) from the Agency must:

- Declare an emergency situation exists (required in writing),
- Decide on whether to waive competitive bidding requirements or not, and
- Enter into the necessary contracts to address the emergency situation.

Typically, Emergency Situations include declared federal, state or local disasters, or qualifying emergency events (i.e. flood, fire, unforeseen critical system failure, etc.)

PUBLIC WORKS

(REQUIREMENTS FOR ALL TYPES OF PUBLIC WORKS CONTRACTS)

39.04 PUBLIC WORKS

Contractor Bidder Responsibility Criteria (RCW 39.04.350)

- Have a certificate of registration (RCW 18.27)
- Have a current state unified business identifier (UBI) number (RCW 82.32.070).
- Have industrial insurance coverage for employees (RCW 51).
- Have an employment security department number (RCW 50).
- Have a state excise tax registration number (RCW 82).
- Not be disqualified from bidding (RCW 39.06.010 or 39.12.065(3)).
- Must be in compliance with Washington state apprenticeship and training council requirements (RCW 39.04.320).
- Other Bidder Responsibility and Supplemental Bidder Responsibility Criteria apply.

RCW 39.04 PUBLIC WORKS

Competitive Bidding is required for all Public Works

These requirements may be waived (RCW 39.04.280- Exemptions) for:

- When Purchases are clearly and legitimately limited to a single source of supply.
- Purchases involving special facilities or market conditions.
- Purchases in the event of an emergency.
- Purchases of insurance or bonds.
- Public works in the event of an emergency.

There is no “Direct Buy Policy” for Public Works Procurement.

When the DES Direct Buy Policy (RCW 39.26) is used in lieu the “Small Public Works Procedures”, there is a violation of the competitive bidding requirements and circumvents the use of the Small Works Roster (RCW 39.04.280).

RCW 39.04 PUBLIC WORKS

Original Cost Estimate Requirements (RCW 39.04.050):

- Estimated quantities of each class of work.
- Estimated unit cost for each class of work.
- Estimated total cost for each class of work.
- Time limit allowed for the completion of the work.
- Estimated dates of commencement and completion.

Original Cost Estimates DO NOT represent Actual Costs.

- Cost Estimates are based on known construction-market pricing at time of bidding.
- Contractors assess individual risks and the costs of performing work.
- Bids submitted by Contractors differ from Original Estimates.

RCW 39.04 PUBLIC WORKS

What is the purpose of the Original Estimate?

- Establishes the Anticipated Value of a Public Works Contract.
- Determines the applicable Public Works Procurement type or process.
- Ensures the Anticipated Public Work Contract Amount is less than approved budget.
- Allows bidders to assess their bonding capacity.
- Allows an Agency to evaluate of bids received.

RCW 39.04 PUBLIC WORKS

Payment and Performance Bond Requirements (RCW 39.08.010)

A Surety (or Contractor's Insurance Company) must guarantee the Contractor, and its subcontractors at every tier, will:

- Faithfully perform all the provisions of such contract.
- Pay all laborers, mechanics, subcontractors, material suppliers, and any person who supply provisions and supplies for the carrying on of such work.
- Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW.

RCW 39.04 PUBLIC WORKS

Diverse Business Requirements (RCW 39.04.160)

ALL Public Works Contracts are subject to RCW 39.19- Office of Minority and Women's Businesses, which generally includes:

- Standard clauses required in requests for proposals, advertisements, and bids (RCW 39.19.050)
- Compliance with public works and procurement goals (RCW 39.19.060)
- Plan to maximize opportunity for minority and women-owned businesses (RCW 39.19.060).
- Compliance with goals—Bidding procedures (RCW 39.19.070)
- Compliance with goals—Valuation of goods or services (RCW 39.19.075)
- Certification of business enterprises. (RCW 39.19.120)

RCW 39.04 PUBLIC WORKS

Retainage/Retention Bond Requirements (RCW 39.08.030)

Agency retains a portion of the Contract Amount to protect from liability for contractor's nonpayment of:

- (i) Laborers, mechanics, subcontractors, material persons, and suppliers; and
- (ii) taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. (RCW 60.28.011(1)a)

Upon completion of Public Works Contracts valued over \$35,000 (RCW 60.28.051)

- Agency provide a completion notice to the Department of Revenue (DOR), Employment Security Department (ESD), and the Department of Labor and Industries (Lnl)
- Release of Retainage (or Retained Earnings) occurs 45 calendar days, ONLY AFTER:
 - Agency receives of release certificates from DOR, ESD, and Lnl; and
 - RESOLUTION OF ALL CLAIMS filed by material suppliers and laborers (RCW 60.28.011)

RCW 39.04 PUBLIC WORKS

Engineers' Certificate (RCW 39.04.080)

- A full and accurate cost account of the project must be filed with original plans and specifications within 60 days after the completion.
- Engineer shall certify the work was performed in accordance with the plans and specifications along with the times of commencement and completion of such work.
- When work is not performed in accordance with the plans and specifications, Engineer shall provide a description of variances in manner and extent required. (e.g. Change Orders)

ARCHITECTURAL AND ENGINEERING SERVICES

RCW 39.80 ARCHITECTURAL AND ENGINEERING SERVICES

Architectural and Engineering (A/E) Services are defined by statute (RCW 39.08.020) as:

“services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.”

- RCW 18.08– Architects
- RCW 18.43- Engineers and Land Surveyors
- RCW 18.96- Landscape Architects

THESE RCW'S OUTLINE SPECIFIC EDUCATIONAL, REGISTRATION AND LICENSING REQUIREMENTS AND SPECIAL CONTRACTING PROVISIONS APPLY!

RCW 39.80 ARCHITECTURAL AND ENGINEERING SERVICES

Selection of Architectural and Engineering (A/E) Services (RCW 39.80) generally requires:

- Announcement of Request for Qualifications (RFQ)
- Statement of Qualifications (SOQ)
- Review of each SOQ submitted by Agency
- Interviews/Discussions with one (or more) A/E Firm
- Establishment of A/E Firm Selection Criteria
- Determination of "Most-Highly Qualified" A/E Firm
- This process will take a number of weeks

**A/E SELECTION MUST BE BASED ON QUALIFICATIONS!
PRICE OF THESE SERVICES IS NOT A FACTOR USED IN SELECTION.**

RCW 39.80 ARCHITECTURAL AND ENGINEERING SERVICES



United States vs. Spearin (1918) or “Spearin Doctrine”

- Key landmark construction-law case.
- Agency “warrants the sufficiency of the information” contained in plans and specifications provided to the Contractor.
- Contractor can not be liable for loss or damage resulting from insufficiencies or defects in plans and specifications provided.
- Agency can not transfer its liability to the Contractor by using restrictive clauses requiring site visits, verification of plans, or requiring a contractor to inform themselves of the work necessary to complete the project.

CONTRACTOR WOULD BE ENTITLED TO EQUITABLE ADJUSTMENTS FOR ANY MISSING INFORMATION IN THE PLANS AND SPECIFICATIONS.

PUBLIC WORKS AND A/E CONTRACTING

Who is Responsible for A/E and Public Works Contracting for the Agency?

Supervisor of Engineering and Architecture (RCW 43.19.450)

- Individual must be a licensed to practice engineering or architecture in Washington for 5 years or more.
- Delegated by DES Director to Assistant Director of FPS (Bill Frare).

Supervisor's Responsibilities (RCW 43.19.450)

- Prepares cost estimates and technical information to accompany the capital budget.
- Prepares (or contracts for) plans and specifications for new construction, major repairs and alterations.
- Contracts for professional architectural, engineering, and other related services.
- Administer Public Works Contracts.
- Provide contract administration or oversight.

PUBLIC AND A/E WORKS CONTRACTING

What to do if you need to hire a Contractor to perform work, or an Architect or Engineer to develop plans and specifications?

A PWR (Public Works Request Form) is required to start a project. These are found on-line:

[Forms/Reference Documents | Department of Enterprise Services \(DES\) \(wa.gov\)](#)

Engineering Architectural Services – Janet Jansen, AIA

State Community and Technical Colleges (EAS Teams A, B and H)

Other State Agencies (EAS Teams A and B), except for WSDOT DNR, DFW and Parks, major universities

Department of Corrections (EAS Team C)

Department of Social and Health Services (EAS Team D)

SUMMARY

- Developed understanding of Public Works Procurement Laws (RCW 39.04), and when may apply.
- Please contact us with questions, speak with your PM and APM about **Roles and Responsibilities**
- Provided additional clarity on the nuanced differences between:
 - Public Works Procurement (RCW 39.04).
 - Architectural and Engineering Services Procurement (RCW 39.80)

We are part of your team to support the work that the SBCTC does throughout the state. We are proud of our role here with all of you!



Small Works

Efficiency and Equity in Public Works Contracting

Janet Jansen, EAS Program Manager

FACILITY PROFESSIONAL SERVICES

May 18, 2023

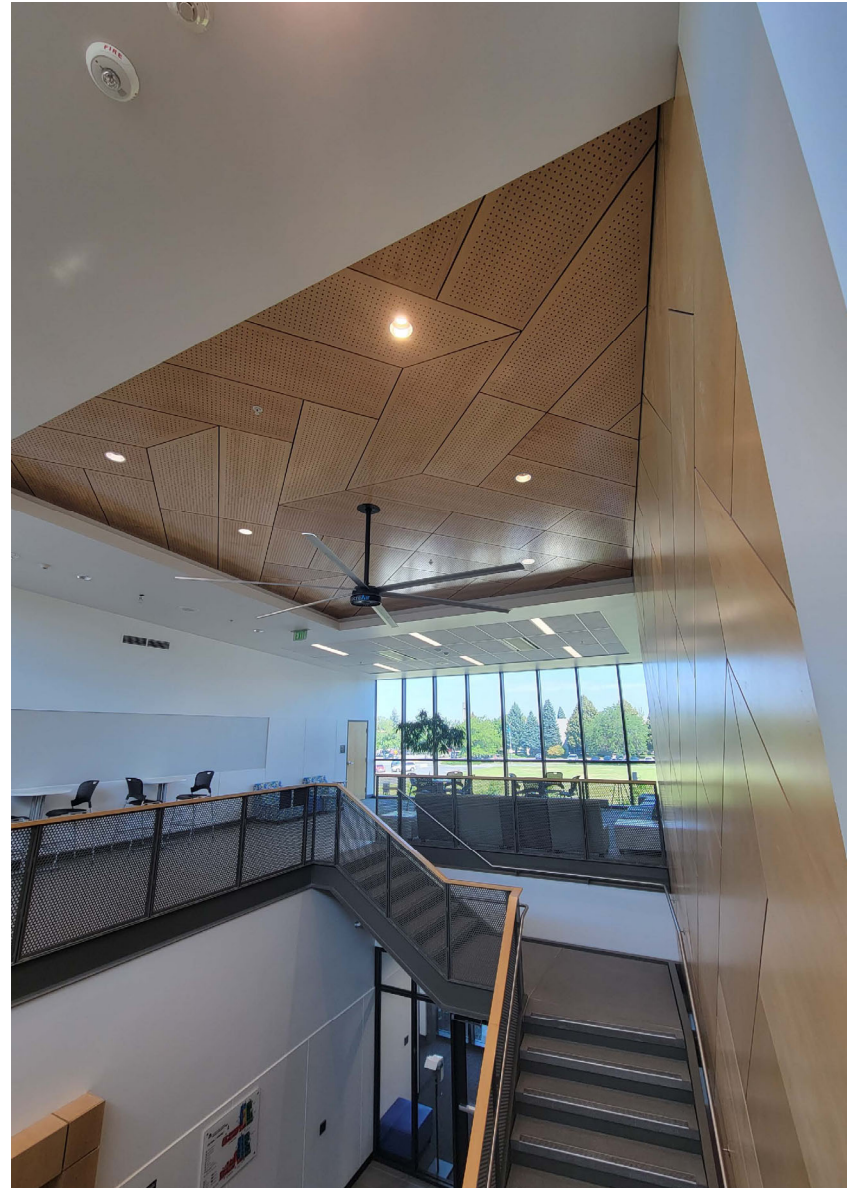


Washington State
DEPARTMENT OF
ENTERPRISE SERVICES

PURPOSE

- 1. Administratively efficient**
- 2. Promote small and diverse businesses**
- 3. Maintain labor protections**

- *E2SB 5268*
- *Signed May 9*
- *Effective July 1, 2024*



PUBLIC WORKS

Construction projects paid for by public funds – typically state, local, or district governments

- *Full plans and specs*
- *Advertised for bid*
- *Receive sealed bids*
- *Public bid opening*
- *Lowest responsive bid*
- *Responsibility criteria*



SMALL WORKS

Informal efficient contractor selection process for smaller public works

- *Minimal plans and specs*
- *Invitation to bid from roster*
- *Informal bid receipt process*
- *No public bid opening*
- *Lowest responsive bid*
- *Responsibility criteria*



SMALL WORKS ROSTER

For solicitation of contractors
for smaller public works

- *Statewide roster hosted by MRSC*
- *Agency roster moved to MRSC*
- *Annual advertisement*
- *Contractors can join at any time*
- *Segregated by trade, agency, or geographic region*



WHO CAN USE SMALL WORKS ROSTER

- State agencies with public works authority
- Authorized local governments including:
 - Cities, towns, counties
 - School districts
 - Port districts
 - Public utility districts
 - and more!



➤ ***For all SBCTC projects – work with your project manager***

SMALL WORKS CONTRACTS

Under \$350,000*

- ✓ Architect estimate, does not include sales tax
- ✓ DES invites all contractors from the appropriate roster to bid
- ✓ Informal process
- ✓ Award to lowest responsive and responsible bidder

SMALL WORKS CONTRACTS

Under \$150,000*

- ✓ Agencies/DES may direct contract through negotiation with a contractor from the appropriate roster
- ✓ Agencies/DES must notify all contractors on the roster
- ✓ Agencies/DES must rotate and not select the same firm repeatedly
- ✓ Small business preference

➤ ***Details for procurement to be determined!***

SMALL BUSINESS CERTIFICATION

OMWBE

- ✓ Creates a new Small Business Certification Program
 - Identical to Minority and Women Owned Business Certification without race and gender
 - Automatic certification
- ✓ Funding for additional staff

KEY CHANGES



Creates Small
Business
Certification



Establishes
statewide small
works roster



Clarifies
language

KEY CHANGES



Standardizes cost thresholds and adds direct contracting



Requires small business utilization plan - each agency creates



Builds in future market updates

RELIEVING FINANCIAL BARRIERS

- Eliminates fees for small contractors
- Helps build credit history
- **<\$5,000:** No retainage or performance bonds required
- **Optional:** Agency may take on liability for retainage fee or performance bond of projects \$5,000 or more

TRANSPARENT COMMUNICATION

- Advertise list annually
- Post awarded contracts annually
- Notify companies on roster when direct contracting is used



WHAT'S NEXT

STATEWIDE COLLABORATION



THANK YOU



Bill.Frare@des.wa.gov



360-280-6083



www.des.wa.gov

QUESTIONS/COMMENTS

THANK YOU



janet.jansen@des.wa.gov
alissa.north@des.wa.gov



360.628.3447 (m)
360.701.6231 (m)



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