

Clean Energy Labor Standards Certification – Draft Emergency Rule Concepts

*The draft emergency rule concepts below outline options for the emergency rule for stakeholder comment. The concepts are based on materials presented and discussed at stakeholder meetings. Please review and provide comments by **November 13, 2019**. Send comments to: Maggie.Leland@lni.wa.gov*

Procurement from and contracts with women owned businesses

Definition:

“Women Owned Business” means a business certified with the Office of Minority and Women's Business Enterprises (OMWBE) as a Woman Business Enterprise (WBE) or Minority Women Business Enterprise (MWBE) under [chapter 326-20 WAC](#).

Criteria:

A minimum of 6% of all contract dollars.

Procurement from and contracts with minority owned businesses

Definition:

“Minority Owned Business” means a business certified with the Office of Minority and Women's Business Enterprises (OMWBE) as a Minority Business Enterprise (MBE) or Minority Women Business Enterprise (MWBE) under [chapter 326-20 WAC](#).

Criteria:

A minimum of 10% of all contract dollars.

Procurement from and contracts with veteran owned businesses

Definition:

“Veteran Owned Business” means a business certified by the Washington State Department of Veteran Affairs under [RCW 43.60A.190](#) or a business considered a veteran owned business under [38 CFR Part 74](#).

Criteria:

A minimum of 5% of all contract dollars.

Good Faith Efforts – Procurement from and contracts with women, minority and veteran owned businesses

Good Faith Efforts:

The efforts employed by the project developer or its designated principle contractor to show that it is maximizing the likelihood that the project will be built in compliance with the standards for procurement from women, minority, and veteran owned businesses. Actions that may be considered as part of good faith efforts include, but are not limited to:

- Proactive outreach to firms that are women, minority, and veteran owned businesses;
- Advertising in local community publications and publications appropriate to identified firms;
- Participating in community job fairs, conferences, and trade shows;
- Identification of interested women, minority and veteran owned businesses that have the capability to perform the work of the contract;
- Providing reasonable time for women, minority and veteran owned businesses and to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;
- Apportioning contract work items into economically feasible units to facilitate women, minority and veteran owned businesses participation and where possible, establishing flexible time frames for performance to encourage participation;
- Adequately researching interested subcontractors and their capabilities before rejecting their proposals;
- Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority and veteran owned businesses, even if other quotes are less expensive.

Procurement from and contracts with businesses that utilize apprentices

Definitions:

"Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington State Apprenticeship and Training Council according to [chapter 49.04 RCW](#).

"Labor hours" means the total hours of workers receiving an hourly wage who are directly employed upon the project.

Criteria:

A minimum of 15% of the total labor hours used to construct the project.

Good Faith Efforts – Procurement from and contracts with businesses that utilize apprentices

Good Faith Efforts:

The efforts employed by the project developer or its designated principle contractor to show that it is maximizing the likelihood that the project will be built in compliance with the standards for apprentice utilization. Actions that may be considered as part of good faith efforts include, but are not limited to:

- The project developer or its designated principle contractor or subcontractors participate in State-Approved Apprenticeship Programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained.
- If apprentices are not available for dispatch at the beginning of the project, it is expected the contractor check back with the program periodically to see if apprentices are available.

The following situations do not meet the requirements for good faith efforts:

- Falling short of the requirement due to subcontractors not using apprentices;
- Not using a State-Approved Apprenticeship Program while you are trying to get your own program approved by the Washington State Apprenticeship and Training Council;
- Not using a State-Approved Apprenticeship Program due to cost;
- Not using a State-Approved Apprenticeship Program because you are an out-of-state contractor;
- Not replacing an apprentice that quit or was fired; or
- Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

Preferred Entry for Local Workers

Definitions:

"Local resident" means Washington workers who live within 50 miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within 200 miles of the project.

"Rural county" as defined by [RCW 82.14.370\(5\)](#), means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.¹

Criteria:

A minimum of 35% of all total labor work hours by local residents.

¹ <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/population-density/population-density-and-land-area-criteria-used-rural-area-assistance-and-other-programs>

Good Faith Efforts – Preferred Entry for Local Workers

Good Faith Efforts:

The efforts employed by the project developer or its designated principle contractor to show that it is maximizing the likelihood that the project will be built in compliance with the standards for preferred entry for local workers. Actions that may be considered as part of good faith efforts include, but are not limited to:

- Listing the job with the local WorkSource office in advance of the start of the project or contract;
- Requesting the dispatch of local workers through union halls;
- Informing community partners/organizations of opportunities in advance of the start of the project or contract;
- Developing an Employment Hiring Plan prior to the start of the project detailing how the local hiring requirements will be met; and
- Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

Where the local resident standard cannot be met, demonstrate a high percentage of hiring of Washington worker outside the local resident area.

History of Compliance with Wage and Hour Laws

Definitions:

“Wage and hour laws” means laws that govern wage rates and hours worked.

“Final order” means a final administrative order at state or federal level; Final civil judgement.

Criteria:

No findings of violations of federal or state wage and hour laws and regulations in the past 24 months.

24 months is calculated from date the bid date.

Good Faith Efforts – History of Compliance with Wage and Hour Laws

Good Faith Efforts:

The efforts employed by the project developer or its designated principle contractor to show that it has maximizing the likelihood that the project will be built in compliance with the standards for procurement from companies with a history of compliance of wage and hour laws. Actions that may be considered as part of good faith efforts include, but are not limited to:

- Efforts to hire contractors with a history of compliance with wage and hour laws.
- Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

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- Requiring remedial measures that allow for on-going review of compliance with wage and hours laws if the only qualified contractor is one who does not meet the standard.