

Mike Purdy's Public Contracting Blog - http://PublicContracting.blogspot.com

## The Changing World of Public Procurement and Contracting

Responses to the Global Market and Struggling U.S. Economy



**Mike Purdy**  
Michael E. Purdy Associates, LLC

(206) 762-2699 (office)  
(206) 295-1464 (cell)  
mpurdy@mpurdy.com

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## Agenda

### - 5 Trends in Public Procurement and Contracting

1.	The Rising Importance of	<b>Relationships</b>	
2.	The Shift Toward	<b>Cooperative Paradigms</b>	
3.	The Drive for	<b>Sustainability</b>	
4.	The Impact of	<b>Technology</b>	
5.	The Quest for	<b>Reducing Costs</b>	

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## The Rising Importance of Relationships

Local Bid Price Preferences	Worker Preferences
Business Type Preferences	Hidden Preferences
Alternative Public Works Contracting	




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## The Rising Importance of Relationships

Global Market  
+  
Struggling Economy  
=  
Local Preferences





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## The Rising Importance of Relationships


- Davis-Bacon Act – The Original Local Preference



Senator James J. Davis (R – PA)      Rep. Robert L. Bacon (R – NY)

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## The Rising Importance of Relationships

### - Davis-Bacon Act – The Original Local Preference

- **Protect Local Jobs:** Original motivation for Davis-Bacon Act
- **Out-of-State Workers:** Alabama contractor awarded a public works project in New York.
  - Brought African-American construction crew to perform the project, displacing white workers from New York
- **Approved in 1931:** Republican Congress and President Hoover



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## The Rising Importance of Relationships

### - Local Preferences

### Shifting Public Agency Priorities

- **Then:** Historical focus on cost
  - Award to “low bid”
  - Relationships and status not important
- **Now:** Current focus on non-cost elements
  - Award based on
    - Local preferences
    - Qualifications (Responsibility)
  - Relationships and status more important
  - Balancing cost to public and social objectives

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## The Rising Importance of Relationships - Local Preferences

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- Types of Local Bid Preferences
  - Percentage preference
  - Match low bid preference
  - Tie-bid preference
  - Tax revenue considerations
  - Reciprocal preference
    - RCW 39.04.380 (for public works projects)

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## The Rising Importance of Relationships - Local Preferences

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### Reciprocal Preference

Bidder	In-State	Out-of-State	Bid Amount	Preference % for state of out-of-state firm	Bid Price for Evaluation Purposes
1		X	\$100,000	5%	\$105,000
2	X		\$103,000	N/A	\$103,000
3		X	\$104,000	0%	\$104,000

If "a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor." RCW 39.04.380

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## The Rising Importance of Relationships - Local Preferences

### Defining "Local" businesses

- Washington: Physical office located in Washington
- New Mexico: Valid resident business certificate issued by the taxation and revenue department
- North Carolina: Pays taxes in NC and has principal place of business in NC
- Miami: Local office
- Conway, SC: Physical presence of an office facility or locally-owned franchise within legal boundaries of the city

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## The Rising Importance of Relationships - Local Preferences

### Preferences for Use of Business Types

- Small businesses
  - King County's Small Business Accelerator Program
- Minority and women owned businesses
  - City of Seattle's WMBE Program (commitments as part of responsiveness review)
  - CPARB draft legislation on approach and past use of MWBEs for GC/CM and Design-Build
- Disadvantaged businesses
  - Prompt payment required by U.S. DOT regulations
  - RCW 60.28.011 (1)(b) for federally funded highways, roads, and streets

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## The Rising Importance of Relationships - Local Preferences

- **Other Business Type Preferences**
  - Supplemental Bidder Responsibility Criteria
    - RCW 39.04.350
  - Buy American Act
    - Buy American products only
  - Slavery Disclosures (Los Angeles)
    - Businesses with slavery roots
  - Holocaust Disclosures (Maryland)
    - Businesses with Holocaust roots



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## The Rising Importance of Relationships - Local Preferences

- **Worker Preferences**
  - E-Verify
    - Hire U.S. Citizens only
    - North Carolina and others require
  - Project Labor Agreements (PLA)
    - Hire union workers
  - Employment of local workers
    - Hire San Francisco residents
    - 20% of workers on \$400,000 projects



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## The Rising Importance of Relationships

### - Local Preferences

- Hidden Preferences
  - Despite evaluation criteria, where subjectivity of evaluation exists, public agencies often favor:
    - Local firms
    - Firms they know
    - Firms they've done business with in the past
- Preference Issues:
  - More bid protests
  - Increased costs to public agencies
  - Defining "Local" businesses

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## The Rising Importance of Relationships

### - Alternative Public Works Contracting

- Design-Build
- GC/CM
  - General Contractor / Construction Manager
- Job Order Contracting



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## The Rising Importance of Relationships - Alternative Public Works Contracting

### Design Build

- 1 firm to design and build project
- Selection not based on low bid, but qualifications also
- Reduces blame and claims
- Cooperative team environment established

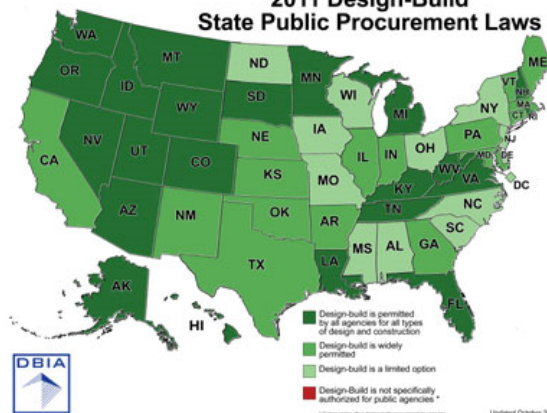
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## The Rising Importance of Relationships - 21 States - Design-Build for All Agency and Project Types

### 2011 Design-Build State Public Procurement Laws



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## The Rising Importance of Relationships - Alternative Public Works Contracting

### General Contractor/Construction Manager

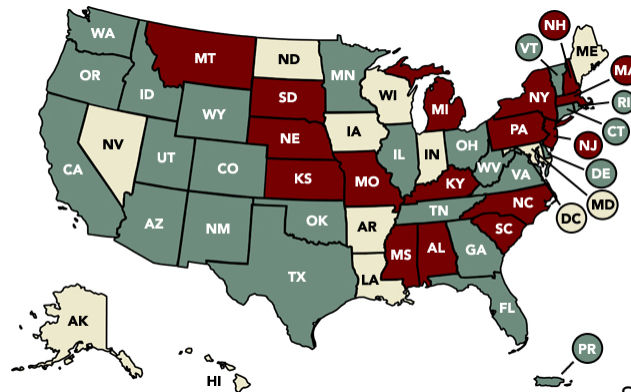
- Partnership model between public agency and contractor
- Early selection of contractor based on qualifications and limited price
- Construction cost negotiated

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## The Rising Importance of Relationships - 22 States With Some Form of GC/CM



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## The Rising Importance of Relationships - Alternative Public Works Contracting

### Job Order Contracting

- Indefinite delivery / Indefinite quantity contract (IDIQ)
- Use of unit price book
- Selection based on qualifications and markup
- Use of negotiated, definitive work orders for public works
- 90% of the work must be subcontracted
- Cooperation with Job Order Contractor

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## The Rising Importance of Relationships


### What drives the rising importance of relationships in public contracting?

- Keeping local economy strong
- Helping local businesses succeed
- Working with people and businesses you know



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## The Shift Toward

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# Cooperative Paradigms

- Piggybacking
- Purchasing Cooperatives**
- Cooperative Rosters

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## The Shift Toward Cooperative Paradigms

### - Piggybacking

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- Using the solicitation and contracts of another public agency



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## The Shift Toward Cooperative Paradigms - Purchasing Cooperatives

- Large scale piggybacking



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## The Shift Toward Cooperative Paradigms - Piggybacking & Purchasing Cooperatives

- Public Benefits
  1. Price: Competitive price discounts based on aggregated purchasing (Cooperatives)
  2. Speed: Faster procurement of goods
  3. Staff: Less procurement staff needed
  4. Expertise: Agencies don't have to be experts in everything
- Models of Cooperatives
  - Lead Agency
  - Purchasing Cooperative

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## The Shift Toward Cooperative Paradigms - Piggybacking & Purchasing Cooperatives

### Public Agency Considerations

1. Government Agency: Must be with a government agency
2. Contract: Interlocal Agreement required
3. Meet Agency Requirements: Procurement process used must meet the competitive selection requirements of the agency doing the piggybacking
4. Follow Procedures: Agency or Cooperative must follow their own procurement requirements
5. Items: Agencies can only purchase items that have been competitively bid
6. Prices: Agencies may compare whether best price is through cooperative or piggybacking

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## The Shift Toward Cooperative Paradigms - Cooperative Rosters

- Rosters for:
  - Construction
    - RCW 39.04.155
  - Architectural/Engineering Services
    - RCW 39.80
  - Consultant Services
  - Vendors (Goods and Services)
    - RCW 39.04.190

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## The Shift Toward Cooperative Paradigms - Cooperative Rosters


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### Benefits

1. Reduced Agency Costs
  - Less administration and cost for agencies, especially small agencies
  - No project advertising costs
2. Reduced Cost for Businesses
  - Saves businesses money on completing and submitting applications
  - CPARB Small Business Task Force is exploring state-wide rosters
3. Broader Market Exposure
  - Easier for businesses to apply for rosters for multiple public agencies

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## The Shift Toward Cooperative Paradigms - Cooperative Rosters

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### Increased Use of Cooperative Rosters



MRSC Rosters  
www.msrcrosters.org  
Washington State  
Shared Small Works / Consultant Rosters



SharedProcurementPortal.com  
A Service of eCityGov.net

<ul style="list-style-type: none"><li>• Used by 27 public agencies in WA</li><li>• 1,500 firms on construction roster</li><li>• 1,100 firms on consultant roster</li><li>• 1,200 on A/E roster</li></ul>	<ul style="list-style-type: none"><li>• Used by 223 public agencies in WA</li><li>• 3,000 firms on construction roster</li><li>• 1,000 firms on consultant roster</li></ul>
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## The Drive for Sustainability

LEED	Greenroads
ESCO	Buying Green
Deconstruction	

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## The Drive for Sustainability

**- LEED - Leadership in Energy & Environmental Design**

- Certification program for sustainable buildings
  - Sustainable Sites
  - Water Efficiency
  - Energy & Atmosphere
  - Materials & Resources
  - Indoor Environmental Quality
  - Innovation in Design
  - Regional Priority
- Certified by Green Building Certification Institute
- LEED Accredited Professionals
- Levels of Certification: Certified, Silver, Gold, Platinum
- More than 14,000 LEED projects in 40 countries
- More than 22 states, many federal and local agencies require LEED



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## The Drive for Sustainability

### - LEED - Leadership in Energy & Environmental Design

- RCW 39.35D – High-performance public buildings
- State agencies and institutions of higher education
- Must meet LEED silver standard
- Major facility projects
  - 5,000 gross SF of occupied or conditioned space
  - Building renovation project when cost is greater than 50% of the assessed value and project is more than 5,000 gross SF
- Accountability issues in contracting with designers and contractors

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## The Drive for Sustainability

### - Greenroads Rating System

- Sustainability rating system for roadway design and construction projects
  - Project Requirements
  - Environment and Water
  - Access & Equity
  - Construction Activities
  - Materials & Resources
  - Pavement Technologies
  - Custom Credits



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## The Drive for Sustainability - ESCO (Energy Services Contracting)

- Selected contractor performs analysis of facilities looking for energy savings and conservation projects
- Public agency reviews and accepts proposal
- Contractor performs work and guarantees energy savings over a period of time justifying the improvement
- Structuring the finances, risks, and guarantees

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## The Drive for Sustainability - Deconstruction

- Careful dismantling of buildings & structures
- Reusable materials are recycled
- Preserves raw resources
- Reduces demolition waste in landfills
- Creates new jobs
- Takes longer than demolition, but often cheaper
- Reclaimed material is either sold (reuse stores) or incorporated into projects


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## The Drive for Sustainability

### - Deconstruction



Alaskan Way Viaduct

- 45,000 tons of concrete from demolition
- Most will be ground into aggregate and incorporated into new concrete for the tunnel
- Thousands of tons of used rebar will be either recycled or melted down into new rebar

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## The Drive for Sustainability

### - Buying Green

- Environmentally Preferable Purchasing (EPP) or Green Purchasing Programs
- Recycled content products
- Remanufactured laser cartridges
- Products that reduce greenhouse gas emissions
- Toxin-free chemicals in pesticides
- Green janitorial and cleaning supplies
- Low energy use products
- Mandating products meeting EPA, Energy Star, Green Seal, and other standards

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# The Impact of Technology

- Bid Solicitations and Bidding
- Social Media**
- Building Information Modeling (BIM)

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# The Impact of Technology

- Notification of business opportunities
  - Shorter newspaper advertisements pointing to websites
  - Balancing cost savings with marketing projects
- Availability of bidding documents
  - Transferring printing costs to private sector
    - Agency websites
    - WEBS
    - Builders Exchange
    - eBid Systems

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## The Impact of Technology

### Electronic submission of bids

- Trend setters
  - WSDOT
  - Missouri Department of Transportation
  - North Carolina
- Software by Bid Express and other companies
- Issues
  - Compliance with procurement laws
  - Security
  - Reliability
  - Authenticity
  - Confidentiality
  - Impact on small businesses

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## The Impact of Technology


### Social Media

- Blogs, Twitter, LinkedIn, Facebook, etc.
- Public agencies and contractors
  - Soliciting bids on Social Media
  - Communication tools
- How are you using Social Media?



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## The Impact of Technology

### Building Information Modeling (BIM)

- 3-D Modeling
- Used for clash detection in designs
- Build the facility in 3-D before actually building it
- Saves money
- Architects and engineers increasingly beginning to use it
- Larger contractors using it

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## The Quest for Reducing Costs

Procurement Strategies
Privatization
Public-Private Partnerships (PPP)

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## The Quest for Reducing Costs


### - Procurement Strategies

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Issuing government credit cards
Decentralizing procurement function
Increasing bidding thresholds
Using more on-call contracts <ul style="list-style-type: none"><li>-Construction</li><li>-Architectural / Engineering</li></ul>

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## The Quest for Reducing Costs

### - Procurement Strategies

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Requesting bids for additive work <ul style="list-style-type: none"><li>-Bid protection strategy</li></ul>
Buying through reverse auctions
Cutting design money for facilities
Increasing prevailing wage thresholds <ul style="list-style-type: none"><li><u>Ohio</u>: House voted to increase from \$80,000 to \$3.5 million;</li><li>Senate voted to increase to \$125,000</li></ul>

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## The Quest for Reducing Costs - Privatization

- **Definition:** Transferring traditional government functions to the private sector
- **Role of Government:** Budget crunch intensifies debate about role of government
- **Debate:** Lower costs vs. quality and control of services provided

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## The Quest for Reducing Costs - Privatization

- **Privatization Examples:**
  - Ohio bill would allow state universities to privatize their parking facilities and dormitories
  - Michigan bill would require school districts to bid out food service, custodial, and transportation services
  - Detroit considers privatizing garbage collection to save \$14 million a year
  - Louisiana evaluating privatization of state health and life insurance program for 148,000 state workers
  - New Jersey plans to transfer operations of state TV and radio network to private sector

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## The Quest for Reducing Costs

- Public-Private Partnerships


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### Blurry Line with Privatization

- **Privatization** more likely with services
  - Maintenance of public agency road infrastructure
- **Public-Private Partnerships** more likely with capital facilities
  - Private toll road

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## The Quest for Reducing Costs


- Public-Private Partnerships

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- **Risks and Rewards:** Public and private sector equitably sharing risks and rewards to stretch public resources
- **Strengths and Needs:** Balance strengths and needs of both sectors
- **Different Deals:** Takes many different forms with each one a separate deal
- **Not Always Low Price:** Best value vs. low bid
- **Time Constraints:** Usually time limited

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## The Quest for Reducing Costs

### - Public-Private Partnerships

- Examples
  - Turnkey building
  - Federal tax credits for low income housing
  - Design-Build-Operate-Maintain
  - Design-Build-Finance-Operate-Maintain
  - Operations-Maintenance-Management
- Prevailing Wages as threat to PPPs
  - California: Developer required to pay prevailing wages because the project contained some public funds
  - Washington: Legislation defeated in 2010 that would have required prevailing wages on Public-Private Partnerships






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## Summary

### Global Market...Struggling Economy...

1.	The Rising Importance of	<b>Relationships</b>	
2.	The Shift Toward	<b>Cooperative Paradigms</b>	
3.	The Drive for	<b>Sustainability</b>	
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## Michael E. Purdy Associates, LLC

- Contact Information

<b>Office</b>	(206) 762-2699
<b>Cell</b>	(206) 295-1464
<b>E-mail</b>	mpurdy@mpurdy.com
<b>Web</b>	www.mpurdy.com
<b>Blog</b>	http://PublicContracting.blogspot.com
<b>LinkedIn</b>	http://www.linkedin.com/in/mpurdy
<b>twitter</b>	http://twitter.com/#!/MikePurdy
<b>facebook</b>	https://www.facebook.com/pages/Michael-E-Purdy-Associates-LLC/92090808667
	PO Box 46181, Seattle, WA 98146




Mike Purdy  
Principal

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