

Chapter 296-140 WAC
CLEAN ENERGY LABOR STANDARDS CERTIFICATION

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WAC

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WAC 296-140-001 Definitions. (1) The following definitions apply to the entire chapter:

(a) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(b) "Department" means the department of labor and industries.

(c) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification, but are unable to meet these standards based on availability of qualified businesses or workers. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

(d) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

(e) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage 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.

(f) "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 a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(g) "Person" has the same meaning as in RCW 82.04.030.

(h) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that estab-

lishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(i) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapters 49.04 RCW and 296-05 WAC.

(j) "Rural county" has the same definition as RCW 82.14.370(5).

(k) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(l) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190.

(2) The following definitions apply to WAC 296-140-002 through 296-140-004:

(a) "Category 1 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to:

(i) Develop a facility capable of generating not less than 1,000 watts AC of electricity using any of the following principal sources of power: Fuel cells, wind, biomass energy, geothermal resource, tidal or wave energy, or technology that converts otherwise lost energy from exhaust;

(ii) Develop solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(b) "Category 2 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(c) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust. "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Repair parts required to restore machinery and equipment to normal working order;

(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;

(v) Buildings; or

(vi) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3) The following definitions apply to WAC 296-140-005 and 296-140-006:

(a) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(i) Manufacturing operations;

(ii) Facilities to produce clean fuels, subject to the limitations in RCW 82.89.010 (8)(d), renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(iii) Storage facilities.

(b) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(c) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(d)(i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020;

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(e) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(f) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(g) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(i) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(ii) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(iii) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(iv) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(v) Electricity from renewable resources; or

(vi) Storage facilities.

(h) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(i) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of

increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(j) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(k) "Recipient" means a person receiving a tax deferral under chapter 82.89 RCW.

(l) "Renewable resource" has the same meaning as in RCW 82.08.816.

(m) "Storage facility" means a facility that:

(i) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(ii) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption.

(4) The following definitions apply to WAC 296-140-007 and 296-140-008:

(a) "Eligible area" means a qualifying commercial center.

(b) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.90.030, is received by the department, in an eligible area.

(c)(i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080; or

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(d) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

(e) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(f) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(g) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

(h) "Recipient" means a person receiving a tax deferral under chapter 82.90 RCW.

(i) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

"Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-001, filed 5/23/23, effective 6/23/23. Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-001, filed 10/13/21, effective 11/13/21.]

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for department certification for the 50 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan;

(ii) Have 5.5 percent of the contract dollars awarded to minority-owned businesses, 9.5 percent of the contract dollars awarded to women-owned businesses, and five percent of the contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but 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 conferences and trade shows; and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract.

(B) Providing reasonable time for women, minority, and veteran-owned businesses 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.

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable.

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation.

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the standard.

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses.

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards.

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in a 60 month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) 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;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

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

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) 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;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) 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.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Requesting the dispatch of local workers through union halls;

(D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(F) 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.

(2) To qualify for department certification for the 75 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent retail sales and use remittance for machinery and equipment installed

and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-002, filed 5/23/23, effective 6/23/23. Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-002, filed 10/13/21, effective 11/13/21.]

WAC 296-140-003 Labor standard certification for Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. To qualify for department certification for the 50 percent retail and use tax remittance for machinery and equipment and the labor and services rendered in respect to installing the machinery and equipment, a Category 2 clean energy project must meet the standards for procurement from and contracts with women, minority, or veteran-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, apprenticeship utilization, and preferred entry for workers living in the area where the project is being constructed under WAC 296-140-002 (1) and (4).

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-003, filed 10/13/21, effective 11/13/21.]

WAC 296-140-004 Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. (1) For Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962, businesses applying for department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contract dollars with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

- (v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and
- (vi) Other records and documentation requested by the department, OMWBE, or DVA.
- (b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.
 - (i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;
 - (ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;
 - (iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (c) Standard for apprenticeship utilization.
 - (i) The name, occupational title, and registration number for each registered apprentice;
 - (ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;
 - (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
 - (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
 - (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For Category 1 clean energy projects seeking certification for the 50 and 75 percent tax remittance and Category 2 clean energy projects seeking certification for the 50 percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of completion, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For Category 1 clean energy projects seeking certification for the 100 percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for the construction and installation of the energy producing equipment have all been signed.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-004, filed 5/23/23, effective 6/23/23. Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-004, filed 10/13/21, effective 11/13/21.]

WAC 296-140-005 Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid for under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts before the initiation of construction of the investment project. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan; and

(ii) Have 5.5 percent of contract dollars awarded to minority-owned businesses, and 9.5 percent of contract dollars awarded to women-owned businesses, and five percent of contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but 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 and with the office of minority and women's business enterprises; participating in conferences and trade shows; and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(B) Providing reasonable time for women, minority, and veteran-owned businesses 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;

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable;

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation;

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs nonunion employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the standard;

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services;

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses;

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards;

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a fi-

nal and binding order by an administrative agency or court of competent jurisdiction in the 60-month period prior to the bid date; or

- (ii) Good faith efforts which include, but are not limited to:
 - (A) Efforts to hire contractors with a history of compliance with wage and hour laws;
 - (B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and
 - (C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.
- (c) Standard for apprenticeship utilization.
 - (i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or
 - (ii) Good faith efforts which include, but are not limited to:
 - (A) 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;
 - (B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;
 - (C) The following situations do not meet the requirements for good faith efforts:
 - (I) Falling short of the requirement due to subcontractors not using apprentices;
 - (II) 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;
 - (III) Not using a state-approved apprenticeship program due to cost;
 - (IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;
 - (V) Not replacing an apprentice that quit or was fired; or
 - (VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.
 - (d) Standard for preferred entry for workers living in the area where the project is being constructed:
 - (i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or
 - (ii) Good faith efforts which include, but are not limited to:
 - (A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;
 - (B) Participating in community job fairs, conferences, and trade shows;
 - (C) Requesting the dispatch of local workers through union halls;
 - (D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;
 - (E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and
 - (F) 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.

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, under subsection (1) of this section; and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must have a signed PLA or CWA for the project prior to the initiation of construction of the investment project on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-005, filed 5/23/23, effective 6/23/23.]

WAC 296-140-006 Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW. (1) Recipients applying for department certification under chapter 82.89 RCW, must complete an application in a form required by the department prior to the initiation of construction of the investment project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

(v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and

(vi) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project,

public works reporting requirements may satisfy reporting requirements.

(4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-006, filed 5/23/23, effective 6/23/23.]

WAC 296-140-007 Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan; and

(ii) Have 5.5 percent of contract dollars awarded to minority-owned businesses, 9.6 percent of the contract dollars awarded to women-owned businesses, and five percent of contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but 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 and with the office of minority and women's business enterprises; participating in community job fairs, conferences, and trade shows; and identification of interested women, minori-

ty, and veteran-owned businesses that have the capability to perform the work of the contract;

(B) Providing reasonable time for women, minority, and veteran-owned businesses 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;

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable;

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation;

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs nonunion employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the standard;

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services;

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses;

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards;

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 60-month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws;

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) 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;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

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

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) 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;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Requesting the dispatch of local workers through union halls;

(D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(F) 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.

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, under WAC 296-140-005(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-007, filed 5/23/23, effective 6/23/23.]

WAC 296-140-008 Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW.

(1) Recipients applying for department certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW must complete an application in a form required by the department prior to the initiation of construction of the investment project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

(v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and

(vi) Other records and documentation requested by the department, OMWBE or DVA.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identifica-

tion number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, recipients must submit

notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-008, filed 5/23/23, effective 6/23/23.]

WAC 296-140-009 Request for reconsideration of department decision.

(1) Applicants for department certification may request reconsideration of the department's decision to deny certification. The request for reconsideration must be received by the department within 30 calendar days from the date the department's decision is communicated to the applicant.

(2) An applicant must:

(a) Specify the department decision(s) that the applicant is disputing;

(b) State the basis for disputing the department's decision; and

(c) Include documentation to support the provider's position.

(3) The department may request additional information or documentation. The applicant must submit the additional information within 30 calendar days of the date on the department's request.

(4) The department will review the original decision, information supporting the original decision, the applicant's reconsideration request and supporting documentation and will notify the applicant of the status of its reconsideration decision within 90 days. This is the final department decision, and an applicant may appeal according to RCW 34.05.570(4).

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-009, filed 5/23/23, effective 6/23/23.]