

# WSDOT's policy on estimate availability prior to Bid Opening



All members of the Project Development Team and support offices have the responsibility to maintain the confidentiality of the project estimate from project inception, through Bid Opening.

**THE ENGINEER'S ESTIMATE SHALL BE CONSIDERED AS INFORMATION CONFIDENTIAL TO WSDOT.**

It is not to be shared with persons other than appropriate WSDOT project development personnel, contracted consulting staff and if applicable, Local Agencies and their consultants/agents.

This confidentiality shall apply during all stages of project development through Bid Opening.

This policy applies to ALL projects being publicly bid regardless of the method of PS&E delivery.



## Some answers to common questions regarding estimate disclosure

### At what stage of the bid process Is the Engineer's Estimate Published?

*WSDOT announces the engineer's estimate at Bid Opening.  
We only publish an estimate range at project Advertisement.*

### Why is the Engineer's Estimate published at Bid open and not a publically disclosed document open for all bidder's

*State statute requires an estimate be prepared prior to requesting bids.  
The estimate is a final document subject to public disclosure statutes at bid opening.  
However, WSDOT considers the preliminary estimate a working document subject to revision until bids are opened and not subject to public disclosure until that time.*



## FHWA's Perspective

One disadvantage of making the estimated cost public is that firms desiring to rig bids can use the engineer's estimate as a basis for determining the low-bid amount to be submitted. This is especially important in cases where the contracting agency anticipates minimal competition and/or a single bid for construction.

While confidentiality of the estimate obviously will not by itself successfully deter a firm from conspiring with other bidders, it does prevent bidders from knowing what approximate amount the contracting agency is willing to accept. For those agencies that believe total secrecy from the public is not realistic in their State, as a minimum attempt of confidentiality, a range for the estimated project cost could be provided and included in the bid proposal document

# Leaking Bid Data

## IS CONSIDERED FRAUD



Employees who leak pre-bid information or confidential information to a favored bidder, give that bidder an unfair advantage in the bidding process.

### Fraud Indicators

Fraud indicators or fraud “Red Flags” may indicate the presence of fraud within the department. However, the presence of fraud indicators does not always mean that fraud has occurred or is occurring. Consider fraud indicators as clues and increase your awareness

### What to Watch for

*Are there instances or a pattern of:*



- The winning bid being unusually close to the Engineer’s Estimate.
- A single bidder wins all the contracts under the purview of a specific individual or team

### What to do

If you suspect that bid leaking is occurring, contact Jeff Tawney, Audit Office - Investigations (360) 705-7008. Provide him with:

- Name of who may be providing the leak
- The Contract or contracts that may be affected
- The Contractor suspected of receiving the information

## State Laws Regarding fraudulent actions (full text attached to end of document)

RCW. 42.52.040	<b>Assisting in transactions</b> - -Except in the course of official duties or incidental to official duties, <i>no state officer or state employee may assist another person, directly or indirectly</i> , whether or not for compensation, in a transaction involving the state
RCW. 42.52.070	<b>Special privileges</b> - Except as required to perform duties within the scope of employment, <i>no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.</i>
RCW. 42.52.160	<b>Use of persons, money, or property for private gain</b> - <i>No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.</i>
WAC. 292-110.010	<b>Use of state resources.</b> , All state employees and officers are responsible for the <i>proper use of state resources</i> , including funds, facilities, tools, property, and their time

# What are we doing right now?

When originally created, no formal procedures were placed within EBASE to guard against fraudulent employee actions. EBASE was designed to be a collaborative statewide database system for the sharing of project estimate information.

## Steps Being taken

A Statewide survey has been distributed to discover who is using EBASE and in what capacity. Once the response period is over, a notice will be issued that all nonresponsive names with EBASE access will be removed from the system.

A form is being developed to request EBASE access. This form will require a users name and employment status, to determine if they are temporary or consultant, and their intended use of the system, to determine access level.

Modification to User access rights for active project estimates prior to award. I.T. is making these revisions to EBASE and a new version of EBASE will be deployed once these security measures are in place.

## Security already in place

There is currently a level of access for hired consultants and temporary employees. This level of access allows consultant employees to see only those estimates that they have been given specific access. This level of access needs to be specified when project offices are requesting access for their designers.

*See the following page for requesting Consultant access. This page should be forwarded to all project offices in the Regions.*





# EBASE Technical Notes

## EBASE access for Consultants and Temporary Employees

### Limiting Contracted employees for their Estimate activity in EBASE

Special User Levels have been setup to accommodate entry into EBASE by Consultants who are preparing project estimates.

This access is available to WSDOT Consultants and temporary Employees working on site in a project office, or to Consultant Liaisons working within the Consultant office who have access to a remote connection for the WSDOT network.

This level of access is:

**EBaseEstimatesJobUsers**

### Getting a Consultant or Temporary Employee setup with EBASE

When a direct access Connection is available to WSDOT servers:

EBASE must be loaded on the PC and The Consultant must possess a valid 6+1 WSDOT network ID.

\* Contact the Region Help desk to have this application installed and to request a network ID for the Consultant.

Once the application has been installed and a Network ID established, Contact:

Thomas W. Hume @  
360.705.7456

To obtain access for data entry into EBASE, and for help in the use of the application.

Local Helpdesk	
HQ	360.705.7050
Northwest	206.440. 4420
North Central	509.667. 2920
Olympic	360.357. 2603
Southwest	360.905. 2038
South Central	509.577. 1670
Eastern	509.324. 6050
Mats Lab	360.709. 5454
WSF	360.515. 3800

Should no connection be available through a WSDOT Consultant Liaison, The Consulting office Must submit their Estimate data to the WSDOT Project Office they are working with. The Project Office will then enter the estimate data into EBASE

# Law



## **RCW 42.52.040**

### **Assisting in transactions.**

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

(4) This chapter does not prevent a state officer or state employee from assisting, in a transaction involving the state:

(a) The state officer's or state employee's parent, spouse or domestic partner, or child, or a child thereof for whom the officer or employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the state officer or state employee did not participate in the transaction; or

(b) Another state employee involved in disciplinary or other personnel administration proceedings.

[2008 c 6 § 203; 1994 c 154 § 104.]

## **42.52.070**

### **Special privileges.**

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

[1994 c 154 § 107.]

## **RCW 42.52.160**

### **Use of persons, money, or property for private gain.**

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) This section does not prohibit de minimis use of state facilities to provide employees with information about (a) medical, surgical, and hospital care; (b) life insurance or accident and health disability insurance; or (c) individual retirement accounts, by any person, firm, or corporation administering such program as part of authorized payroll deductions pursuant to RCW 41.04.020.

(4) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

[2014 c 28 § 1; 1996 c 213 § 7; 1994 c 154 § 116; 1987 c 426 § 3. Formerly RCW 42.18.217.]

## **WAC 292-110-010 Use of state resources.**

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(2) Permitted uses.

(a) Use of state resources for official state purpose. "Official state purpose" includes use of state resources to conduct official duties, activities reasonably related to the conduct of official state duties, activities related to state employment, and activities otherwise allowed by statute. Examples of official state purposes include:

(i) Training and career development approved by the employing agency under RCW 41.06.410;

(ii) Membership or participation in professional associations that enhance job-related skills of the state officer or employee, so long as use of state resources for this purpose has been authorized in writing;

(iii) State or agency sponsored health, safety, or diversity fairs;

(iv) Management of or access to state-provided or state-sponsored benefits, including health, deferred compensation, insurance, retirement, and the employee assistance program;

(v) Searching and applying for state jobs, including taking an examination or participating in an interview; and

(vi) Placement of nongovernmental web page links on an agency web site for official state purposes as long as the use does not violate RCW 42.52.180.

**Continued**



..... **WAC 292-110-010 Use of state resources.**

(b) Agency approved use. An agency head or designee may authorize limited use of agency staff time and resources for the following uses as long as that use is specifically authorized in an agency policy and conforms to that policy:

- (i) Supporting, promoting, or soliciting for charitable activities;
- (ii) Employee recognition, including birthday, retirement, wedding/baby showers, or other similar celebrations;
- (iii) Activities supporting agency organizational effectiveness provided the agency's policy allowing use of state resources for such purposes is approved by the executive ethics board;
- (iv) State or intermittent agency sponsored health activities, for example, vaccinations, diabetes screenings, cholesterol screenings; or recording participation in an agency or PEBB sponsored wellness program.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

(b) A state officer or employee may use state resources for wellness or combined fund drive activities as long as use conforms with (a) of this subsection or as authorized in state law and rule.

(4) No expectation of privacy. Technologies such as electronic mail, facsimile transmissions, the internet, and voice mail may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. The ethics rules do not distinguish between the various forms of communication. Electronic records are reproducible and therefore cannot be considered private. Such records may be subject to disclosure under the Public Records Act, or may be disclosed for audit or legitimate state operational or management purposes.

(5) Reimbursement for personal use. In some limited situations, such as officers or employees working at remote locations, an agency may allow reimbursement for limited personal use of state resources by the state employee or officer.

(6) Agency policies. Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this section is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, even if it would constitute a violation of agency policy.

(7) Advisory opinions and frequently asked questions. The executive ethics board publishes advisory opinions interpreting the Ethics in Public Service Act and/or its rules and provides answers to frequently asked questions regarding the use of state resources that can be found at [www.ethics.wa.gov](http://www.ethics.wa.gov).

[Statutory Authority: RCW 42.52.16 [42.52.160], 42.52.360. WSR 16-03-052, § 292-110-010, filed 1/15/16, effective 4/1/16. Statutory Authority: RCW 42.52.360 (2)(b). WSR 09-16-046, § 292-110-010, filed 7/28/09, effective 8/28/09. Statutory Authority: RCW 42.52.360 (2)(b), 42.52.160(3). WSR 02-07-074, § 292-110-010, filed 3/18/02, effective 4/18/02; WSR 98-08-054, § 292-110-010, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 42.52.160(3). WSR 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]