

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
June 8, 2006
9:00 AM**

Final Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Appointment Pending	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Rep. Kathy Haigh (Vice-chair)	House of Representatives (D)
Ed Kommers	Specialty Contractor	Sen. Phil Rockefeller	Senate (D)
Carolyn Crowson	OMWBE		
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Ray Rawe	Cities/Counties/Ports		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		
Nora Huey	Cities/Counties/Ports		
Olivia Yang	Higher Education		
Dan Vaught	School District Project Rvw Bd		
David D. Johnson	Construction Trades Labor		
Sen. Dave Schmidt	Senate (R)		
Wendy Keller	Public Hospital Project Rvw Bd		

STAFF & GUESTS

Nancy Deakins, GA	Michael Transue, AGC
Searetha Kelly, GA	Robin Cooper, MCA
Cheri Lindgren, Puget Sound Meeting Services	Steve Masse, OFM
Pam Johnson, OST	Phil Zeutenhorst, Lacey Glass
Dick Lutz, Centennial Construction	Ginger Eagle, WPPA
Larry Stevens, MCA/NECA	Nancy Heyen, OFM
Diane Smith, Senate	Gary Baldasary, Washington State Ferries

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:09 a.m.

A meeting quorum was attained. Chair Lynch reported he missed the May 11, 2006 CPARB meeting, but was able to attend subcommittee meetings in June. The subcommittees are making good progress. A question arose about whether to provide names and e-mail addresses of CPARB members on the website. The Board raised no objections. Staff will follow up with the task.

Mr. Ray Rawe, substituting for Michael Mequet, introduced himself. Boardmembers and staff provided self-introductions.

Approve Agenda

The agenda was accepted as presented.

Approval of May 11, 2006 Minutes

Mr. Larry Byers requested the following change to the minutes:

- On page 5, within the third paragraph, third line, change the sentence that begins with “Typically” to state “Typically, the underwriting of surety bonds are based on a number of metrics, including net worth as opposed to sales.”

Staff submitted corrections to accurately reflect the spelling of Ray Rawe on page 1 and Rodney Eng on page 4.

Dave Johnson moved, seconded by Rocky Sharp, to approve the May 11, 2006 minutes as amended. Motion carried.

Legislative Session Task Force

Chair Lynch reported the Legislative Session Task Force will meet next week. The task force will evaluate the Board's role regarding potential legislation. CPARB could add value; make comments, and/or forward recommendations.

Public Comments

There were no public comments.

Drafting Legislation

Ms. Diane Smith, State Government Operations Lead, reported that The Board's legislative staff member is Marsha Riley. Ms. Riley prepared the PowerPoint presentation for the Board on *Alternative Public Works – Drafting Perspective for Proposed Legislation*. The presentation will provide the Board with tools to help translate agreements into a bill that the senate or house may wish to introduce during the next legislative session. Ms. Smith reviewed legislative drafting approach options ranging from “clean-up” changes to rewriting the chapter to conform to actual practice if it varies from current statutory language. The outline of the presentation included General Provisions, Design-Build (DB), General Contractor/Construction Manager (GC/CM), Job Order Contracting (JOC), Demonstration Projects, and Other Provisions.

Ms. Smith reviewed Section 1 of the statute, General Provisions. The Board will want to review the findings and purpose sections of the existing statute. Language governing the Board must be precise. A Board similar to that described in current statute is anticipated, as well as a new entity. Exact terminology to describe the new entity is also important. The only two sections that do not have a sunset date or are limited by their own terms are Chapters 39.10.800 and 39.10.810. The Board may want to include such matters as quorum and alternates in Chapter 39.10.800, or it might want a separate section. Currently, Chapter 39.10.810 describes the powers and duties of the Board. It might be necessary to add approval or public hearing functions as a duty of the Board and/or of the new committee. The definitions section does not include JOC, or the terms of art in the construction industry. If the senate or house directs legislative staff to define terms, Ms. Smith said the Board will want to carefully review the definitions. Current statute contains a public records exemption, contract management and contracting requirements, negotiated adjustments, and public notification and review process. The Board may want to apply the public notification and review process to JOC only and transfer that function to the committee or Board as

appropriate. She noted the statute provides for an appeal of the public body's decision to superior court within 30 days of a decision, and allows for attorney fees.

Section II of the statute discusses DB. A procedure description is needed. Legislation drafters are concerned that the current statute is not user-friendly. An option is to build on a parallel structure for each of the techniques. DB is described in several sections of the statute. The Board may want to change how authorization for use is decided. DB applies to projects over \$10 million in value. State law outlines the contract award process.

Ms. Smith referred to Section III, GC/CM. The section needs a procedure description and the Board should identify who is authorized to use it. The parameters of use, contract award process, and maximum allowable construction costs are also part of the section. The term "maximum allowable construction costs" has been given emphasis during meetings and is a significant term. Another part of the GC/CM section that should be clear is the evaluation criteria and minimum acceptable score for subcontractor eligibility.

Legislative drafters want to parallel JOC to other contracting techniques. The Board needs to consider the procedure description, authorization for use, parameter of use, and the contract award process.

Ms. Smith said it's her understanding that the project review boards for schools and hospitals are to be retained at this point. Demonstrations projects section 39.10.065 can be repealed, as it requires authorized contracts to commence before July 1, 1999.

Drafting considerations include defining the appropriate terms, giving careful consideration to mandatory versus permissible language, and organization of the chapter.

Ms. Smith presented additional issues to the Board for consideration:

- Determine criteria for the effective and feasible use of alternative contracting procedures.
- Qualification standards for general contractors bidding on alternative public works contracts.
- Policies to improve public benefit of traditional and alternative delivery methods.
- Expansion, continuation, elimination, and modification of alternative public works methods (technically only GC/CM and DB).
- Evaluate potential future use of other alternative contracting procedures, including competitive negotiation.

In response to comments from the Board, Ms. Smith indicated that everything in Chapter 39.10 sunsets, except the CPARB.

Senator Dave Schmidt commented that the lack of clarity in the statute adds to the cost and time of a project, which creates frustration and confusion. He said he would like to use CPARB's expertise and create language that is defined, clear, and easy to understand and administer.

Chair Lynch echoed similar comments. Using a "plain talk" approach would be beneficial.

Ms. Wendy Keller requested clarification that the informal decision to allow for smaller projects for public hospitals will be qualified at a later date. Chair Lynch replied that he believes that is correct. The decision is dependent upon CPARB's decision concerning whether to create one common review board.

Discussion ensued concerning the format of future meetings, and how the Board will draft clear legislative language concerning the issues raised during the PowerPoint presentation, as well as issues identified by the

subcommittees. Chair Lynch said he envisions the Board making decisions on issues. The experts will develop draft language for Board review and discussion with the Board refining language through its review process.

Discussion ensued about whether public facility districts (PFD) should go through a review board process or use the contracting methods provided in statute. Chair Lynch said the Board may want to forward a recommendation regarding the matter.

Mr. Daniel Absher asked if legislative staff has sufficient information to rewrite statute language. Chair Lynch stated it's his hope that the Board will make some progress and provide guidance to incorporate the issues into draft language for review at next month's meeting.

Ms. Nora Huey asked whether copies of draft language could be provided to members several days in advance of the next meeting to provide review time. Chair Lynch acknowledged that providing the information prior to the next Board meeting would increase the Board's productivity.

Ms. Nancy Deakins suggested the subcommittee's work on draft language should be presented to the Board for review and discussion at the July meeting.

Mr. Rodney Eng said he would like to electronically transmit the Reauthorization of Alternative Public Works Subcommittee's issues to staff following the meeting. He noted the project review board does not meet again until June 22, 2006, and needs to draft a series of recommendations. The subcommittee will not see the recommendations until the first week in July. Implementing the recommendations into the current statute could prove to be a significant task. Ms. Deakins noted the task force has reviewed the language and is drafting components of the legislation.

Chair Lynch said the process could run parallel in that subcommittees could forward draft language changes to the code revisers rather than waiting for the Board to give final approval of the issues.

Ms. Olivia Yang agreed. Issues that are not controversial in nature can move forward. Developing draft language provides a document for review.

Chair Lynch said it appears the Board can proceed in that direction.

Reports from Subcommittees

Data Collection - Carolyn Crowson

Ms. Carolyn Crowson reported the Data Collection Subcommittee discussed the project data outline and sent it out for comment. A list of definitions is needed for the fields. It is acknowledged that the definitions are important for the legislative component as well. She volunteered to draft a preliminary list of common definitions. The University of Washington and Ms. Darlene Septelka will work on the construction definitions.

Chair Lynch conveyed that General Administration (GA) is proceeding to system completion so that the task to gather data can begin. He requested the Board approve the data collections format so that GA can move forward. Ms. Crowson added approving the format will allow for preliminary benchmarking activities with the school district.

Chair Lynch reported GA intends to capture previously collected alternative project data from the Joint Legislative Audit Review Committee (JLARC) reports. If there are missing pieces, GA will ask the owners to "fill in the blanks." GA plans to use an internet-based approach to survey the newer projects that have been completed since

the last time the data was collected, as well as collect conventional project and different public owner information to compare alternative projects to conventional projects.

Daniel Absher moved, seconded by Dave Johnson, to approve and authorize GA to use the format developed by the Data Collection Subcommittee. Motion carried.

Discussion ensued on the development of the drop down menus, drafting legislation announcing the survey, mandatory completion of the survey, and listing major categories of the survey. Ms. Crowson noted the drop down menus will expand over time. She asked members to forward drop down menus they currently use to either her, Ms. Septelka, or staff.

Reauthorization Subcommittee - Rodney Eng

Mr. Eng reported two of the task forces met. Task Force 1- Owner & Project Eligibility, did not meet or forward recommendations to the subcommittee. The only formal matter the Reauthorization Subcommittee voted on were issues related to Task Force 2 around the *maximum allowable construction cost* (MACC). Task Force 3 - Contractor Issues, is considering approximately 20 different matters. Of the 20 issues, less than half have agreement. He said he is optimistic that following one or two meetings, Task Force 3 will forward recommendations to the subcommittee and then to the full Board.

Task Force #2 completed its work in May and will not meet again. The subcommittee is forwarding the task force recommendations to the full Board. Mr. Eng outlined Issue #1, Proposed modifications to RCW 39.10.61(8): "A public body may include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted may exceed five percent of the MACC." The task force recommends a prohibition against a contingency incentive based on savings. The proposed new language reads, "No incentives may be paid for savings from a contingency established for increased subcontract bid package costs for coordination errors related to the work, or coordination omissions with the construction documents, or interference between the subcontractor and GC/CM or between subcontractors or other subcontractors."

A second issue concerns proposed modifications to RCW 39.10.61(5), and the concept that the MACC cannot be set until design documents are 90% complete. A concern is the concept could inhibit certain benefits that GC/CM currently possesses related to earlier setting of the MACC. The concern was addressed by allowing limited exceptions as follows:

- The public body may, at its option, authorize the GC/CM to proceed with the bidding and award of early construction phase bid packages prior to receipt of 100% complete plans and specifications. Any contracts awarded early will be incorporated in the final negotiated guaranteed contract cost.
- Major bid packages may be bid prior to agreement on the MACC between the public body and the selected GC/CM. The GC/CM may issue intent to award to the responsible bidder submitting the low responsive bid.

Mr. Eng noted the task force and subcommittee spent considerable time working on the proposed language changes.

Chair Lynch inquired whether actual construction associated with an early bid package could begin before the MACC is set. Mr. Eng replied that it can and that the Board may want to further clarify the early bid package language. The intent is to not restrict construction with an early bid package. The two major recommendations are presented to the Board for changes to GC/GM legislation.

Chair Lynch asked if the issues agreed upon by Task Force #3 can be forwarded for draft language. Mr. Eng answered yes, and that Task Force #2 and #3 recommendations could advance as a package. However, he requested that the subcommittee have an opportunity to sort through Task Force #3 issues first.

Mr. Eng said the Owner & Project Eligibility Task Force is discussing the project review board concept. There are details that need to be worked out and a recommendation should come forward. The subcommittee provided direction to the task force concerning issues and recommendations. As an example, there is a desire for uniform decisions of a board with the same board members making the decision. On the other hand, there is a desire for a responsive board that can consider projects as they arrive. A large number of projects could result in a bottleneck with a single board. There is a wish for the task force to move forward with a formal recommendation at the next subcommittee's next meeting.

Chair Lynch said there's a concept that existing, experienced owners could go through a shorter process. One question is whether any state agency is eligible versus the list in current statute based on population and other factors. The size of the project is a related issue.

Mr. Ed Kommers agreed the subcommittee should exercise caution concerning the recommendations that are forwarded until all of the details are worked out. Discussion ensued concerning the completion of task force issues prior to the next CPARB meeting. Mr. Kommers conveyed that there is a partial package of issues that can be advanced for draft legislation.

Mr. Johnson commented it is important to remember a fundamental charge of the Board is to understand how well GC/CM is working to begin with; i.e., is the alternative public works process functioning as intended to provide the greatest public benefit. He noted there are many interest groups that want representation in future legislation.

Expansion Subcommittee – Olivia Yang

Ms. Yang reported there is a need to add to the Expansion Subcommittee membership. Robynne Parkinson, representing Design Build Institute of America (DBIA), has submitted a request to participate on the Expansion Subcommittee. Ms. Deakins noted Gary Ballew is no longer a subcommittee member and Ms. Parkinson would fill the vacancy if approved by the Board.

Dan Vaught moved, seconded by Rodney Eng, to appoint Robynne Parkinson to the Expansion Subcommittee. Motion carried.

Ms. Yang said the subcommittee met last week and discussed whether owner criteria, developed in earlier committee meetings, could be used in legislation instead of, or whether they should be used in addition to language in current legislation. The subcommittee attempted to define an "experienced" owner. The intent is to provide a more streamlined process for an "experienced" owner. She reviewed the three motions put forward by the subcommittee:

- "Experienced" owner is defined as a public agency which has two projects, \$10 million GC/CM and substantial completion. The motion included the "graduation" clause (that if an owner completes two, the owner is considered an "experienced" owner). The motion was met with opposition due to the "graduation" clause.
- Two projects, substantial completion, GC/CM under \$10 million (if owner has done two projects, owner graduates). So the graduation will also apply to projects under \$10 million. The second motion was also met with opposition.
- "Experienced" owner is defined as owner with two projects, \$10 million GC/CM, substantial completion by June 30, 2007. There was greater consensus by the subcommittee concerning the third motion.

The subcommittee also discussed JOC. Ms. Yang conveyed she will reissue materials concerning JOC and the DBIA for further consideration at the subcommittee's July meeting. In summary, the JOC issue is whether to increase the work order limit of \$150,000. The DB issues concern the process. In earlier meetings, there was general consensus that the criteria for GC/CM and DB should be the same. A second proposal is to strengthen the language concerning honorariums. A proposed nonprocedural change is to add to the criteria of DB, which could prove controversial.

Discussion ensued regarding the current and proposed public comment and/or review processes for "experienced" and new owners and a single point of review. Mr. Absher conveyed that contractors would support a requirement that all owners go through the same public review process.

Ms. Keller said the intent is the public review process would function similar to a public hearing minus the approval component.

Mr. Kommers conveyed the original hearing process was at a higher level and allowed testimony with an appeal mechanism, which hasn't been done at the project review level. Continued discussion is warranted.

Ms. Yang said the next meeting is scheduled for June 22, 2006. Staff will follow up with meeting location.

Mr. Johnson said he wasn't aware there was a proposal to eliminate the public hearing process around a project. It would be good if the review and public hearing processes can be combined. Ms. Yang said it is not the intent to skip the public hearing.

The meeting recessed for a break from 10:35 a.m. to 10:55 a.m.

Continued Subcommittee Reports and Discussion

Chair Lynch requested the Board's direction concerning the Reauthorization Subcommittee's Task Force 2 MACC issues and sending the recommendations prohibiting certain incentives and the timing on setting the MACC on for legislation language drafting.

Rodney Eng moved, seconded by Gary Byers, to accept the "bolded" language as drafted by the task force as listed on the last two pages of the June 1, 2006 *Capital Projects Advisory Review Board Issues Tracking* document, and forward the draft language to the code revisers for review and editing as necessary to draft a bill format.

Mr. Absher clarified that the actual language did not incorporate several of the modifications discussed at the last subcommittee meeting. Issue #4, proposed modifications to RCW 39.10.61(5), should read in part, "The MACC may be negotiated between the public body and the selected firm *only* when the design of the project is sufficiently complete..." There were other language changes as well. Ms. Deakins said the changes are picked up in the meeting minutes. Staff will edit the language as written and modified at the last subcommittee meeting and forward to Mr. Eng for review and approval. There was consensus by the Board that Mr. Eng will review the draft submitted by staff.

Motion carried unanimously.

Summer Gathering

Chair Lynch suggested the Board defer discussions concerning the summer social event to the next meeting. Ms. Deakins suggested incorporating a social during the lunch break at an upcoming meeting. There was general consensus concerning the concept. The idea of incorporating the social with the July regular meeting was shared. Staff conveyed they will follow up with members.

CPARB Strategies – Are we on track?

Chair Lynch stated that he is optimistic as the Board is working on the issues and he is pleased with the progress.

Senator Schmidt conveyed that CPARB members may contact his office staff or Senator Rockefeller's office staff concerning legislation drafting needs or to obtain feedback on where areas of the statute could use some work. Chair Lynch added GA is obligated to support the Board by statute. Staff can contact him, Ms. Deakins, or other GA staff with technical questions concerning GC/CM project management.

Ms. Deakins said she is hopeful staff will have bill format legislation for review at the next meeting.

Mr. Absher announced he is unable to attend the August 10, 2006 meeting. Senator Schmidt announced he is unable to attend the July and August meetings. Members discussed and confirmed a quorum for the July and August meetings.

Set Next Meeting Agenda

The next meeting is scheduled for July 13, 2006 at the O'Brien Building. The meeting agenda will follow a similar format with additional time to discuss subcommittee reports and potential draft legislative language from Task Force 1. The meeting may be extended to allow for the lunch social.

Discussion followed about strategies to provide the Board with an efficient review process of draft legislation.

Mr. Kommers reported he has a small number of subcontractors anxious to come before the Board and provide input and testimony in support of the Board's work. Chair Lynch conveyed that the Board's meeting agenda provides for public comments. Mr. Eng suggested the Board schedule subcontractor comments as an agenda item at the end of the July meeting, before the Board breaks for lunch. There was general consensus by members.

Adjournment

Chair Lynch adjourned the meeting at 11:14 a.m.

John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services