

CAPITAL PROJECTS ADVISORY REVIEW BOARD

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

Final Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Daniel Absher	General Contractor	Sen. Dave Schmidt	Senate (R)
Rocky Sharp	Specialty Contractor	Dan Kristiansen	House of Representatives (R)
Ed Kommers	Specialty Contractor	Sen. Phil Rockefeller	Senate (D)
Juan Huey-Ray	OMWBE	Nora Huey	Cities/Counties/Ports
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Larry Byers	Insurance/Surety Industry		
Stan Bowman	Design Industry		
David Johnson	Construction Trades Labor		
Olivia Yang	Higher Education		
Evan Ujjiye	School District Project Rvw Bd		
Dick Goldsmith	Public Hospital Project Rvw Bd		
Kathy Haigh (Vice Chair)	Senate (D)		

STAFF & GUESTS

Nancy Deakins, GA	Marsha Reilly, OPR
Searetha Kelly, GA	Dick Lutz, Centennial Contractors
Cheri Lindgren, Puget Sound Meeting Services	Rick Slunaker, AGC
Pam Johnson, OST	Donna Gregg, ESD #112
Charlie Brown, King County School Coalition	Ashley Probart, AWC
Rick Benner, Western WA University	Ginger Eagle, WPPA
Robin Cowper, MCA	Mary Digenon, WSDOT
Diane Smith, OPR	Paul Berry, CMAA
Larry Stevens, MCA/NECA	Denise Stiffarm, Preston Gates Ellis
Daryl Huntsinger, WSDOT	

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:14 a.m. A meeting quorum was attained. Everyone present provided self-introductions.

Approve Agenda

The agenda was accepted as presented.

CPARB FINAL MINUTES

November 9, 2006

Page 2 of 14

Mr. Ujjiye arrived at 9:16 a.m.

Approval of October 12, 2006 Meeting Minutes

Dave Johnson moved, seconded by Daniel Absher, to approve the minutes of October 12, 2006 as presented.

A correction to the October 12, 2006 minutes was requested correcting Rick Slunaker's name.

The motion carried as amended.

Public Comments

There were no public comments.

Brief Reports from Subcommittees

Data Collection – Chair Lynch

Representative Haigh arrived at 9:20 a.m.

Chair Lynch reported GA released the owner survey approximately one month ago. The survey is going well with data collection underway for both Alternative Public Works (APW) and Design Bid Build (DBB) projects. Approximately two-thirds of the projects are APW. An owner can report part of the information and submit more data at a later date. Refinement of the team survey is ongoing. Ms. Deakins added a report will be provided to the Board in December.

Expansion – Olivia Yang

Ms. Yang reported the Expansion Subcommittee followed up on the Job Order Contracting (JOC) Task Force report and discussed owner criteria.

Chair Lynch reported a task force was formed several months ago to sort out details and draft a recommendation regarding JOC issues. The task force rendered a number of decisions and presented them to the subcommittee earlier in the month. The subcommittee accepted most of the task force's recommendations but determined it could further expand upon the work.

Mr. Eng arrived at 9:23 a.m.

Staff distributed a list of issues the JOC Task Force released as a consensus recommendation. Chair Lynch reviewed the 10 issues with the Board. Ms. Deakins noted not all of the recommendations are reflected in the draft legislation.

Ms. Yang reported on the results of several straw votes of the Expansion Subcommittee on three JOC components - work order limit, annual limit, and total duration of the contract. The subcommittee had a different view than the task force. However, the subcommittee is close to providing a recommendation.

CPARB FINAL MINUTES

November 9, 2006

Page 3 of 14

Discussion ensued about the limit for individual work orders. Ms. Yang said the subcommittee recommends a \$300,000 limit for individual work orders with two allowed at \$350,000. Chair Lynch said the Board will discuss JOC issues later in the meeting.

Ms. Yang reported the subcommittee also discussed owner criteria and input offered by Senator Rockefeller at the last meeting. Ms. Keller provided preliminary draft ideas for the subcommittee's consideration. The group believes that Section 105 of the statute covers the concepts for appropriate criteria. The consensus is to retain the current language in Section 105 and provide additional detail within the guidelines that elaborate on the concepts, but it would not be part of the draft legislation. Design industry representatives indicated they would like more specificity of the criteria as part of the legislation.

Mr. Bowman replied the general concepts are good. However, the design industry would like specifics included in the draft bill. One concern is that the bill is vague enough that many public owners will be unable to determine whether to apply and/or qualify to bring projects to the review board.

Ms. Yang reviewed the three-part motion made and seconded at the Expansion Subcommittee meeting stating, "First, that a Project Review Board is created with the authority to review and approve public works and that any public entity can bring a project before the Board. Second, based on Section 105 (1) (d), the Project Review Board can certify an Experienced Public Owner for 3-5 years so that the public body would not require Board approval for every project. Third, CPARB will develop guidelines and rules for the Board based on the criteria in Section 105 (1) (d)." The subcommittee passed the motion 12 to 1.

Mr. Kommers asked whether the subcommittee discussed whether certification applies for three, four, or five years. Ms. Yang said the certification period was discussed, but there was no consensus. Mr. Eng conveyed he worded the motion to reach consensus. The timeframe can be addressed later.

Mr. Kommers asked if there was consensus about the type of hearing required for a certified owner. Mr. Eng explained there is too much detail offered in the preliminary ideas drafted by Ms. Keller. The subcommittee did discuss the criteria. The general consensus was the document represented too much specificity. It is unlikely the subcommittee or CPARB would reach agreement on each point. The alternative was something more general that would allow a review board to work with the general guidelines as provided in Section 105 (1) (d), and to develop more detailed criteria related to approving a specific project or certifying an owner. It is likely there will be different sets of criteria - one for a specific project/owner of a single project and another for an experienced owner to remain certified and not required to appear before the board for a period of time (3-5 years). The motion reflected that the subcommittee was not able to reach a consensus as to the specific criteria.

Mr. Kommers asked if the notification process outlined in 39.10.030 for a certified owner/public body was approved at a subcommittee meeting. Ms. Yang said the subcommittee did not discuss the issue. She noted the certified owner concept is relatively new. Mr. Kommers said he's interested in the review process for a certified owner and asked if the process reverts back to 39.10.030. Ms. Yang and Mr. Eng replied that the subcommittee did not formally consider the matter. Mr. Eng said there was no vote on the question of review versus comment.

Discussion ensued about four potential alternatives for a certified public body, such as project review committee for review and approval which negates the purpose of being a certified owner, that the public body could go before the review committee for review only, or that the public body could complete the "39.10.030 hearing process" on its own, or do nothing further.

CPARB FINAL MINUTES

November 9, 2006

Page 4 of 14

Reauthorization – Rodney Eng

Mr. Eng reported progress and consensus was reached for portions of the latest draft within Sections 200 and 300. The subcommittee did not have sufficient time to discuss Section 400 or JOC. In addition, there was no consensus to draft language. The subcommittee also concluded there were too many variables related to Section 100. The subcommittee needs direction from the Board before it can draft language. While there has been an attempt to only include language in the draft that the Board has approved, there are exceptions. The concept of what constitutes an experienced public body is a wide-open issue. There is language in the draft statute. The hope is to complete the draft effort in one or two more meetings.

Representative Haigh referred to the “floor” issue and asked if the monetary amount is still \$5 million. Mr. Eng said \$5 million is one option, while other owners are interested in a lower floor. The actual number was left blank as a placeholder.

Mr. Kommers said the Language Review Subcommittee tried not to make policy changes during the language clean-up process. The review committee will need some latitude to complete refining the language. There is “non-approved” language in the draft legislation. He suggested highlighting potential controversial language. The committee will incorporate language it believes the rest of the members are comfortable with. Chair Lynch agreed with the approach. All members are responsible to read the final draft in its entirety. Members are buying into the final product once CPARB has approved the draft.

Mr. Eng said the Language Review Subcommittee is attempting to draw a line between providing clarity versus creating new policy.

Discussion followed about the timeline to complete the draft legislation. Chair Lynch said the draft statute should be completed by the Board’s December meeting. Representative Haigh agreed December or January would suffice. It’s important members have sufficient time to return to their constituents for reflection and that there is consensus among public owners, contractors and subcontractors on the draft statute. It’s likely further changes will result over the next ensuing year but that the draft proposal is a good first step.

Ms. Yang commented that if a draft document for December is the goal, it’s important for members to reach consensus soon. Chair Lynch added that GA is fielding questions from engineering firms and other owners interested in knowing what’s proposed.

Chair Lynch recessed the meeting from 10:11 a.m. to 10:30 a.m. for a break.

Industry-wide Issues – Dave Johnson

Mr. Johnson briefed CPARB on topics discussed at the Industry-wide Subcommittee meeting held on November 3, 2006, including responsible bidder language in statute based on specific criteria. The subcommittee reviewed statutes from other states to mix and match criteria and reviewed section 43.19.1911. A small task force was formed to work on specific language for the December 8, 2006 subcommittee meeting. It was determined there are “boiler plate” issues each awarding agency should take into consideration. There were additional suggestions about how to determine responsibility.

Subcommittee members reviewed the Mike M. Johnson case in depth and discussed implications of the non-prejudice clauses that GA and the University of Washington (UW) use that are not included in similar contracts used by other owners throughout the state.

CPARB FINAL MINUTES

November 9, 2006

Page 5 of 14

Chair Lynch added subcommittee members were split and it may not be possible to reach consensus. The Associated General Contractors (AGC) group has written a “white paper” on the topic. It is not a new issue. He said he is not sure of the level of detail CPARB will be able to provide to the Legislature about the Mike M. Johnson case. The Board might report both sides. The current responsibility criteria outlined in 43.19 are not tailored to design and construction projects. A list that is appropriate for construction is a good idea. A question is whether the list consists of a stand-alone set of requirements that an owner measures against, or if an owner that bids out a job is required to include language in the contract stating for “this” project, “acceptable experience means this” with objective measures.

In response to a request from Ms. Yang, Mr. Johnson reviewed a fairly intensive list of points for responsibility. A draft list is anticipated for the December 8, 2006 meeting. Discussion followed about awarding agencies having the ability to develop their own list of criteria defining what they consider is a responsible contractor.

Ms. Yang asked whether a bidder has the opportunity to appeal a determination made by an owner. Chair Lynch said the subcommittee established a task force to review the appeal process. GA’s process allows for an appeal. The process works pretty well.

Discussion ensued about the certification and/or a higher level of licensing process for owners. Mr. Johnson replied the discussion centered on the need to develop documentation that is not onerous for the owner or awarding agency when conducting due diligence. Subcommittee members did not discuss a certification process. Representative Haigh suggested a contractor completing a certification program in conjunction with licensing requirements could help streamline the process.

Mr. Byers asked whether the criteria will apply to non-bonded work or all bids. Mr. Johnson replied there was discussion on the matter. Mr. Byers explained the options bond companies use to underwrite. Representative Haigh asked if Mike M. Johnson was bonded. Mr. Byers answered yes. Mr. Johnson said the bonding companies have stated they’re the “gatekeepers” for responsibility. Subcommittee member do not believe that’s appropriate and there are at least nine other states that have extensive responsibility criteria.

Further discussion followed about other safeguards and how bonding companies conduct due diligence. Chair Lynch agreed that the Board does not need to double up on the requirements specified by the bonding companies.

Draft Legislation

Ms. Reilly reviewed the changes since the last meeting. Staff distributed a “Separation of Powers Issue” risk assessment paper. There are several ways to deal with risk, such as removing legislators from the Board or creating two boards - one with rule making authority and one without. Separation of powers is an issue only if challenged. The draft document was changed to reflect two boards - CPARB and a Project Review Committee with the assumption that members want to retain legislators on the Board. If that’s not the case, the language could be revised.

Chair Lynch reported he recently spoke with the Governor and representatives from the Attorney General’s (AG) Office and learned there is resistance to forming new boards. He said he prefers a Board subcommittee approach rather than the creation of a new review board. Mr. Eng said the Board should consider the consequences should a risk manifest itself. He questioned the advantage to the Board establishing a subcommittee responsible for review.

CPARB FINAL MINUTES

November 9, 2006

Page 6 of 14

Mr. Absher asked whether a no-risk review committee under CPARB has rulemaking authority. Ms. Reilly replied no. The review committee is executing law. She referred to the *In State v. Hambleton* case cited in the "Separation of Powers Issue" document.

Rick Slunacker said the state has created a number of other executive organizations that include ex officio and nonvoting legislative members. The advantages outweigh the risks, one of which is the Board has four appointees that can translate CPARB into legislative language. It is important to have that perspective in the process.

Daniel Absher moved, seconded by Rodney Eng, to appoint a Project Review Subcommittee with no rule-making authority and that it retain the legislators appointed to the Board. Motion carried.

Ms. Reilly continued the review of changes to the draft legislation and referred to definition #5 on page 2. Mr. Eng provided additional explanation of the amendments to the "Total contract cost" and "Maximum allowable construction cost" (MACC) definitions. The definition for "Negotiated support services" was supported by the Board and there is no intent to change how people look at the MACC.

In response to a question from Chair Lynch about approved change orders, Mr. Eng said that if a change order comes in during the project, the MACC is increased by the amount of the approved change order. Mr. Mequet indicated another option is to subtract the amount of an approved change order from the contingency. Both methods should be allowed. Mr. Kommers said the definition as proposed wouldn't preclude either option.

Mr. Kommers pointed out several issues. The first is that "old section 101" is still part of the language and the Board made some changes at the last meeting. Ms. Reilly replied staff will ensure it is incorporated in the draft. Mr. Eng clarified the language was refined to broaden the scope beyond "large municipalities." Mr. Kommers said the second matter concerns definition #13. Mr. Reilly said the drafters are waiting for a decision from the Board and that the proposed language is a placeholder. Discussion of the difference between the two options for definition #13 ("Experienced public body") followed. Mr. Kommers stated the Board has not agreed to either option.

Mr. Stevens referred to the top of page 4 where "committee" was replaced with "board." Ms. Reilly said based on the Board's action it will be changed to "board."

Specific to the membership of CPARB, Mr. Bowman stated there is an interest to include a dedicated engineer position because the roles of engineers and architects are different. Chair Lynch said other suggestions have included another general contractor, JOC contractor, and a construction management company.

Discussion ensued about an appropriate number of members and balanced representation on the Board. Ms. Deakins said currently there are 17 members with 11 members having voting rights. Mr. Eng said the hospital and school districts want to be voting members. If additional positions are added, he requested that all cities/counties/ports be afforded full votes versus the current two out of three. The Board previously discussed adding two at-large, private positions. Representative Haigh said it's important that the final number is uneven. Anything less than 25 is probably workable as long as everyone attends and participates. Mr. Eng said the Language Review Subcommittee was concerned with creating a balance between public and private entities. The draft does speak to private members. Additional discussion ensued about creating a balance of industry representation on the Board. Representative Haigh said creating the balance is more important than the total number.

It was noted that within the third line of (c) at the top of page 5, "public" should be retained.

CPARB FINAL MINUTES

November 9, 2006

Page 7 of 14

Representative Haigh suggested replacing “school districts” within the third line of (d) on page 5 with “Washington State School Directors Association.” There were no objections.

Additional discussion about the process to appoint individuals to fill vacant public and/or private positions on the Board followed. Ms. Deakins noted the Governor reviews each application and endorsement letter. Ms. Reilly said the standard approach is to have an association nominate an individual for the Governor to select.

Concerning section 103, Ms. Deakins explained that the new #1 more fully describes CPARB’s duties that includes traditional and alternative delivery methods. Mr. Eng said the focus was to streamline the language rather than change the focus of the Board. It was determined that items #5 and #6 at the top of page 7 belong in a different section of the draft statute.

Ms. Reilly said the bill drafters will rewrite section 104 in light of the motion and action taken earlier. Paul Berry said the language should clarify that the Board will augment its committee instead of the committee being limited to just members of the Board. Mr. Bowman noted paragraph two states there should be a balance, which should address the concern.

Ms. Reilly indicated the Board needs to make a decision about the conceptual language within section 105 on page 9 that outlines the Project Review Committee’s duties. There are changes related to “experienced” versus “certified” and there is no wording about a recertification process. Mr. Eng said once CPARB has provided further direction, the task force can redraft the language. He stated it might take several motions and suggested members should first review the remainder of the draft document.

Mr. Johnson noted there’s a reference to “RCW 39.10.810” within paragraph (2) on page 7. Section 39.10.800 speaks to the membership of the Board. Ms. Reilly noted staff will correct references as necessary.

Ms. Yang suggested the Board review the DB sections prior to lunch and consider other issues after lunch. There are issues remaining within part one that will require substantive discussion.

Ms. Reilly referred members to section 202 on page 19 that speaks to data collection. Mr. Eng said the language still refers to a \$10 million threshold pending a decision from the Board. The reason for so many deletions is because the section previously dealt with both DB and GC/CM. The deletions are picked up in section 300 for GC/CM. The language deleted is not relevant in a typical DB process.

Discussion ensued about owner requirements related to data collection information, the phrase, “provide its reasons for rejection in writing,” and whether the Board is ready to make a motion that DB is applicable only to projects above \$10 million. Members indicated they were not ready to make a motion.

Mr. Bowman and Ms. Yang agreed that item “e” on page 19 that includes “or consultants” should be discussed in Section 105.

Mr. Kommers conveyed that DBIA proposed changes to the DB statute that were not controversial in nature. He asked whether the draft has been reviewed to ensure the language was incorporated. Mr. Eng and Ms. Deakins replied yes.

Chair Lynch recessed the meeting from 11:53 a.m. to 1:00 p.m.

Continue Draft Legislation

Daniel Absher moved, seconded by Rodney Eng, for drafting purposes only, to adopt the concept of a three-year owner certification process through the Project Review Committee. The certification process is public and includes appropriate criteria inherent in the language. Once a public owner is certified, the public owner no longer must go through a public hearing on individual projects. The public owner is required to submit project information during the three-year period. At the time of certification, a public owner must submit a three-year capital project plan that includes all projects over \$10 million and that the owner plans to use GC/CM and DB delivery methods. Noncertified owners and all projects under \$10 million must come before the Project Review Committee for review and approval. Further, there is no “floor” for GC/CM projects, and that the DB “floor” should be addressed in a separate motion.

Discussion of the capital project plan and the three-year certification timeframe followed.

Mr. Bowman suggested removing the issue of “floor” for both GC/CM and DB, and address it separately as a possible friendly amendment to the motion. The makers of the motion accepted the friendly amendment.

Motion as amended carried unanimously.

The Board discussed membership. Ms. Deakins provided a list of the current membership and proposed new members. Following discussion by members, proposed new members could include:

- One additional general contractor (could be job order contractor)
- Two at large from the private community (could be an engineer, construction manager/project manager, private sector contractor, job order contractor, subcontractor, could be labor)
- Give all cities, counties, and ports full voting membership
- Give hospital and school districts full voting membership

Mr. Johnson commented the membership appears to be contractor heavy. He suggested adding another labor member.

Mr. Bowman said that the engineer profession is concerned that its voice is not represented.

Chair Lynch said the list on the board adds up to 17. If the Board specifically added an engineer and a second labor representative, the result is still an odd number. Representative Haigh suggested the labor member could be a specialty contractor. Mr. Absher said he supports a second labor representative and second design industry position.

Rodney Eng moved, seconded by Dave Johnson, to increase the membership of CPARB totaling 19 members as described. Membership includes an additional general contractor, two at-large positions from the private industry, an additional labor representative, and an additional engineer representative. Change the term “design” to “architecture.” Additionally, that the current two votes for ports/cities/counties is changed to three votes, and provide voting status to both public hospitals and school district representatives.

Mr. Bowman requested membership for the architecture/engineering be referred to as “profession” rather than “industry.”

CPARB FINAL MINUTES

November 9, 2006

Page 9 of 14

Mr. Eng offered a friendly amendment that the motion is for drafting purposes only. The makers of the motion accepted the friendly amendment.

Motion as amended carried unanimously.

Members discussed the threshold for APW. Chair Lynch said there seems to be agreement for a \$10 million project threshold. One question is whether there should be a floor for GC/CM and/or DB and the dollar amount of the floor.

Mr. Absher said contractors would likely agree. It could be interpreted that any project over \$5 million is okay if there is a \$5 million floor. Any project under a \$10 million threshold requires project review committee scrutiny. He said he doesn't anticipate many projects under \$5 million requesting the GC/CM delivery method.

Chair Lynch said a list of criteria is necessary so the review committee isn't inundated with smaller projects. Mr. Goldsmith said the cost of the project shouldn't matter if an owner meets the guidelines. Using the GC/CM delivery method is a business decision by a public owner.

Mr. Bowman conveyed some concerns expressed by his constituents. It is difficult to judge the advocacy of particularly the smaller projects due to a lack of sufficient data. The Joint Legislative Audit and Review Commission (JLARC) study didn't consider smaller projects. Some agencies think GC/CM should apply to \$15 to \$20 million projects. He said his constituents believe there is a diminishing return on the dollar value when using the GC/CM delivery method compared to DB for smaller projects. There should be an acknowledgement that there's additional information that should be demonstrated for smaller projects compared to larger ones.

Mr. Eng said he doesn't disagree with the diminishing return idea. However, there are projects under \$10 million that are clearly appropriate for the GC/CM method. Sophisticated owners are making the calculation when determining the value versus the cost to use GC/CM. He said he is concerned with establishing an arbitrary number. He said he supports not having a floor for GC/CM. Mr. Goldsmith agreed. If the review committee is using the criteria to define what makes a good GC/CM project when evaluating a proposal, it should suffice regardless of the project cost.

Discussion ensued about accountability, non-sophisticated owners putting together project teams and applications, how inflation has effectively lowered the \$10 million project threshold, and matters tied to reauthorization should be tied to another JLARC report with feedback about whether the delivery method is working or not.

Mr. Eng conveyed that he was deliberate when he used the phrase "sophisticated owner" because the Project Review Committee is only going to approve a project if it's appropriate and the owner has the sophistication to participate in the process.

Rodney Eng moved, seconded by Daniel Absher, to establish no floor for GC/CM projects. All owners with projects costing less than \$10 million are required to go before the Project Review Committee for review and approval of the project.

The intent of the motion assumes there are appropriate criteria in the committee's process to effectively screen projects and owners.

CPARB FINAL MINUTES

November 9, 2006

Page 10 of 14

Further discussion about the JLARC process and sunset date followed. Ms. Reilly said a year prior to the sunset, JLARC will undertake a study. Once the bill is passed, JLARC will work with the committee on the performance measures and outline what's expected once the sunset expires.

Motion carried unanimously.

Members discussed whether to adopt a floor for DB. Mr. Eng said cities would propose a \$2 million floor if the Board decides to designate a dollar limit. It's consistent with the authority given to Washington State Department of Transportation (WSDOT). Mr. Bowman offered that a surface transportation project is very different from a building project. He suggested a \$20 million floor. Speaking on behalf of GA, Chair Lynch conveyed that GA is not interested in using the DB method for projects under \$10 million.

Daniel Absher moved, seconded by Dave Johnson, to retain the DB floor of \$10 million.

Discussion followed about the difference between GC/CM and DB criteria. Mr. Absher said it costs the contractor approximately \$10,000 to propose a GC/CM project compared to \$250,000 for DB. It is not worth using the DB delivery method for a small project. Mr. Bowman agreed and said the burden of the upfront costs falls heavily on architecture firms. The incentive to compete is low. Mr. Byers echoed similar comments.

Ms. Yang agreed with comments offered by Mr. Goldsmith and that it should be up to the owner and the Project Review Committee to make the determination.

The motion carried with 6 in favor and 3 opposed.

Chair Lynch suggested drafting the language based on the vote. The decision is not final until a vote is taken on the final draft bill.

Discussion ensued about the limit for individual work orders, duration of the initial contract, and the annual volume limit for JOC. Ms. Yang said there is consensus for a three-year contract total. There was concession around a \$4 million annual volume limit. However, there was no consensus regarding the individual work order limits. The UW proposes \$350,000 while labor is more comfortable with \$250,000 with two allowed at \$300,000. Chair Lynch said that the higher change order limit of \$350,000 demands a \$5 million annual volume limit.

Mr. Johnson said while the \$4 million is a concession for \$5 million, right now it's at \$9 million. The \$4 million brings the total to \$12 million, which represents a \$3 million increase over the life of the job order contract. The two additional work orders are double the current limits. He said he supports expansion if the methods are working well. However, the idea was to determine how well the APW methods are working and if there are ways to improve them. The expansions proposed are significant.

Mr. Lutz said it's important to note the JLARC did not study JOC. However, "we" have studied JOC; there is three years of data. It can be demonstrated that the delivery method is successful and a \$5 million annual limit is realistic for larger public owners.

Mr. Eng reported the City of Seattle considered using JOC under the current guidelines and determined it wouldn't work. An increase to \$250,000 isn't going to change that. However, a change to \$350,000 might make it workable.

Rodney Eng moved, seconded by Olivia Yang, to adopt a two-year initial contract limit for JOC with one additional year extension (three-year total limit). Motion carried.

Olivia Yang moved to adopt an annual volume limit of \$4 million.

Rick Slunaker expressed confusion about the \$4 million number. Chair Lynch explained the task force recommended a \$3 million annual limit. However, the Expansion Subcommittee believes the limit should be higher. He said he spoke with Mr. Kommers and Mr. Johnson about the higher limit. Mr. Slunacker conveyed that he has some concerns about raising the amounts, periodic renewal, and the opportunity for competition.

The motion died for lack of a second.

Chair Lynch recessed the meeting from 1:56 p.m. to 2:02 p.m.

Dave Johnson moved, seconded by Rocky Sharp, to adopt all of the elements (#1 through #10) outlined on the “JOC Task Force Consensus Recommendation” document with the exception that #2 is changed to reflect the Expansion Subcommittee recommendation, as follows:

- 1. Allowable public users would be the same as in current law.**
- 2. \$300,000 limit for individual work orders with two allowed at \$350,000.**
- 3. \$4 million annual volume limit.**
- 4. Two-year initial contract with one additional year extension (three-year total).**
- 5. At least 90% of work must be subcontracted.**
- 6. General Administration is allowed up to four JOC contracts.**
- 7. Public owner must advertise annually for subcontractors.**
- 8. JOC must advertise annually for subcontractors.**
- 9. Public owner must report annual data to CPARB including:**
 - a. A list of work orders**
 - b. Cost of each work order**
 - c. List of subcontractors for each work order**
 - d. If requested, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each subcontract**
- 10. Restrictions for related A/E services.**

In response to comments from Mr. Slunaker, Chair Lynch explained the limit for individual work orders.

Motion carried unanimously. Mr. Eng abstained.

Mr. Kommers indicated he has outstanding issues about DB and asked about discussing the issues. Chair Lynch suggested Mr. Kommers provide a specific proposal to the Board for consideration at the December meeting and perhaps present the proposal at the Expansion Subcommittee for review.

Representative Haigh and Mr. Byers left the meeting at approximately 2:09 p.m.

Ms. Reilly reviewed the GC/CM section of the draft bill on page 22. A new item #5 was added to Section 301 on page 26 stating, “The project requires specialized work on a building that has historic significance.” Ms. Deakins said it was included in the list of recommended project criteria from the subcommittee. Chair Lynch stated it seems reasonable to add it.

CPARB FINAL MINUTES

November 9, 2006

Page 12 of 14

Mr. Absher said he's unsure whether the language captures what the subcommittee discussed. Specialized work on an historic building is different than an historical renovation. It's the latter the group was trying to capture. Ms. Deakins said the Language Review Subcommittee can refine the wording.

Discussion about buildings "designated" as historic followed.

Mr. Berry stated the intent is preserve and protect the historic aspects of a building. It may be because it's required or that the owner has a desire to do so. Ms. Yang agreed and expressed concerns about using "designated." None of the UW buildings are "designated" as historic.

Rodney Eng moved, seconded by Dave Johnson, for drafting purposes to include language listing historic buildings as a criterion within Section 301. Motion carried.

Ms. Reilly noted section 302 is new. She reviewed the proposed changes. Mr. Eng provided further explanation concerning the revised language. He noted paragraph (2) at the bottom of page 27 implements a Reauthorization Subcommittee recommendation for not using the MACC contingency to fund the incentive. Paragraph (3) on page 28 is a rewrite of the existing concept language and (4) implements another Reauthorization Subcommittee recommendation that the Board approved concerning when interest shall accrue when a public body does not issue a change order in a timely manner. The Language Review Subcommittee will double-check the proposed wording.

Mr. Johnson referred to item (2) on page 29 and asked how responsible bidder is defined. Mr. Eng replied the Language Review Subcommittee made a deliberate decision not to define "responsible bidder" because that is how most low bids are awarded. The discussion about responsible bidder is an industry-wide issue and not limited solely to GC/CM. Ms. Deakins referred to the last sentence within item (2) at the top of page 31 that states, "Responsibility shall be determined in accordance with criteria listed in the bid documents." She said it is her understanding that the Industry-wide Subcommittee will draft a definition for responsible bidder.

Ms. Deakins said new section 308 has not been reviewed by the Language Review Subcommittee but was approved by CPARB at the last meeting subject to Mr. Absher and Mr. Kommers reaching agreement on the proposal. Mr. Eng said the Reauthorization Subcommittee approved the language in concept.

Discussion ensued about softening the 90% of construction documents as it relates to setting the MACC on page 29 to allow a general contractor and an owner to negotiate the MACC prior to the 90% if there is mutual agreement. Mr. Absher said the owner has superior bargaining position if the language is softened. The language as proposed doesn't preclude a contractor and an owner from negotiating the MACC prior to completion of construction documents at 90%. Chair Lynch suggested rewording the first sentence to read in part, "The maximum allowable construction cost... and the selected firm *shall not be obligated to negotiate the MACC until the* design of the project is sufficiently complete..." Mr. Eng said he has several ideas that may or may not work. He suggested the Language Review Subcommittee rework the language for further consideration at the Board's December meeting. Ms. Deakins noted the proposed language reflects the Board's earlier action. Mr. Eng requested the Board authorize the Language Review Subcommittee to incorporate language as appropriate. The subcommittee will note the changes that are new and not formally approved by CPARB. Those reviewing the final draft need some flexibility to craft a final document for the December meeting.

CPARB FINAL MINUTES

November 9, 2006

Page 13 of 14

Mr. Goldsmith referred to page 35 and noted public hospital districts are not included in the definition for public bodies authorized to use the JOC procedure. Public hospital districts are authorized in the current statute. He asked to have them included.

Mr. Absher left the meeting at 2:40 p.m.

Mr. Lynch distributed a letter dated November 9, 2006 from the Washington Construction Industry Council.

Rodney Eng moved, seconded by Michael Mequet, to authorize the Language Review Subcommittee to not only implement the approved language and concepts approved by CPARB, but also if the subcommittee finds other things it believes should be added or changed, it should be allowed to do so. The subcommittee will clearly identify the changes in the draft document. Motion carried.

Further discussion followed about public hospital districts and whether they're authorized to utilize the JOC delivery method in the draft legislative document. Chair Lynch said the intent is to include all public bodies currently authorized in statute to use JOC. Mr. Eng said he recalls that public hospitals presented a very narrow request, such as, using GC/CM authority only to maximize its chances of gaining approval from the oversight committee. The hospitals did not want DB authority and JOC wasn't on anyone's radar. Mr. Bowman said "it" also appears to be the case for schools based on the definition. Ms. Reilly said the JOC language states in part, "every public body and school districts," and that is the reason public hospitals were not included. Chair Lynch agreed with Mr. Eng and said he doesn't remember whether hospitals were included in the JOC list. For the purposes of drafting, he suggested leaving the language as proposed. The Board can make a recommendation to add users to JOC. The Expansion Subcommittee and JOC Task Force agreed to retain the list as currently outlined in statute.

Further discussion of the JOC statute as it relates to public hospitals and educational service districts followed.

Mr. Bowman referred to section 105 on page 8 of the draft and said more specificity is needed in the statute around paragraph (d) that can be objectively measured and determined prior to an applicant submitting a project to the Project Review Board. Chair Lynch said members are interested in looking at the list. The fundamental issues should be in the statute. He asked Mr. Bowman to prepare a draft and circulate it electronically to members. The Board can then be prepared to make decisions at the subcommittee level and/or at the December meeting. He said he would like to have a finished product by December.

Mr. Eng said the Expansion Subcommittee took a straw vote on the matter. Ms. Yang said the subcommittee discussed the detailed criteria and there was consensus that a prior proposal contained too many criteria and it was much too detailed. The vote was 12 to 1 in favor of the current criteria. It is the design profession that is requesting the specificity. Mr. Bowman said there has not been a discussion about narrowing the list and providing more detail about the bullet points on the list. Chair Lynch asked Mr. Bowman to forward draft language to Mr. Eng and Ms. Deakins as soon as possible.

Mr. Huey-Ray left the meeting at 2:56 p.m.

Set Next Meeting Agenda

Chair Lynch reported the next meeting is scheduled for December 14, 2006. Ms. Deakins emphasized the Board needs to make decisions on the final statute language. She suggested that there may be a need to schedule two meetings in December. Mr. Eng said he will assemble a meeting of the Language Review

CPARB FINAL MINUTES

November 9, 2006

Page 14 of 14

Subcommittee as soon as possible and circulate a draft to all interested parties so members can start talking to their constituents prior to the Board's December meeting.

Ms. Reilly said it would be best if the code reviser incorporates the changes the Board approved. Only new changes will be highlighted for the draft that members will receive for the December meeting.

Mr. Johnson asked if the Board will have another opportunity to review the draft again and whether the general concepts around the APW delivery methods will be on the table for discussion. Chair Lynch replied yes, at the December meeting. Mr. Eng added he hopes that the Language Review Subcommittee will have a final draft product no later than the first week in December for distribution to the membership. The Board will review the draft on a line-by-line basis and make final changes at the December meeting.

Adjournment

Chair Lynch adjourned the meeting at 3:02 p.m.

John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services