

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
December 14, 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)
Ed Kommers	Specialty Contractor	Kathy Haigh (Vice Chair)	House of Representatives (D)
Carolyn Crowson	OMWBE	Rocky Sharp	Specialty Contractor
John Lynch (Chair)	General Administration	Larry Byers	Insurance/Surety Industry
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Nora Huey	Cities/Counties/Ports		
Stan Bowman	AIA/WA		
Dave Johnson	Construction Trades Labor		
Olivia Yang	Higher Education		
Wendy Keller	Public Hospital Project Rvw Bd		
Dan Vaught	School District Project Rvw Bd		
Sen. Phil Rockefeller	Senate (D)		
Dan Kristiansen	House of Representatives (R)		

STAFF & GUESTS

Nancy Deakins, GA	Marsha Reilly, OPR
Searetha Kelly, GA	G.S. Duke Schaub, AGC/WA
Cheri Lindgren, Puget Sound Meeting Services	Rick Slunaker, AGC/WA
Pam Johnson, OST	Donna Gregg, ESD #112
Charlie Brown, King County School Coalition	Ashley Probart, AWC
Rick Benner, Western WA University	Ginger Eagle, WPPA
Darlene Septelka, King County	Julie Murray, WA Association of Counties
Mac Nicholson, Legislative Staff	Paul Berry, CMAA
Adam Lawrence, GA	Karen Barrett, JLARC
Daryl Huntsinger, WSDOT	Michael Transue, AGC
Dick Goldsmith, AWPFD	

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:13 a.m. A meeting quorum was attained. Everyone present provided self-introductions. He introduced legislative staff Mac Nicholson who is assuming Diane Smith's position. Marsha Reilly and Searetha Kelly were also introduced.

Approve Agenda

Rodney Eng moved, seconded by Dave Johnson, to accept the agenda as presented. Motion carried.

Approval of November 9, 2006 Meeting Minutes

Ed Kommers moved, seconded by Rodney Eng, to approve the November 9, 2006 meeting minutes as presented. Motion carried.

Public Comments

Ashley Probart, AWC, asked a question about last month's vote on the \$10 million threshold for Design Build (DB). Chair Lynch deferred the question until the Board reviews draft legislation.

Brief Reports from Subcommittees

Industry-Wide Issues – Nora Huey

Ms. Huey reported the Industry-Wide Issues Subcommittee reviewed draft language prepared for bidder responsibility criteria. Members broke the issues down into two parts - definitions and bidder responsibility criteria. The subcommittee will meet to finalize draft legislation about bidder responsibility and present the draft to the CPARB at its January meeting.

Ms. Huey summarized the changes recommended:

- Delete the terms "state" and "municipality" and replace them with the term "public body."
- A requirement that the bidder have a valid contractor registration number at the time the bid is submitted or at the time of award.
- Language that a bidder who is disqualified from bidding pursuant to RCW 39.06.010 or 39.12.065(3) is not a responsible bidder; however, no language change was proposed.
- Delete the provision requiring a bidder to be "entitled to conduct business within the state of Washington." It is too broad. The remaining provisions address the issues. The subcommittee discussed whether this section of responsible bidder should be included in each single invitation to bid or included in statute. Most laws are not cited in the invitation to bid documents. Subcommittee members were to report back to their respective constituents.

The next subcommittee meeting is scheduled for January 5, 2007, from noon to 4:00 p.m., at the Kilroy Building. Ms. Huey will submit the language changes to Ms. Kelly for distribution to all members next week. She asked members to submit comments about the language changes to Ms. Kelly by December 22, 2006.

Representative Kristiansen arrived at 9:21 a.m.

In response to a question from Chair Lynch, Ms. Huey said the proposed language changes affect Chapter 39.04 and all construction contracting. Not just alternative public works (APW) projects.

Discussion ensued about a language recommendation to eliminate the trench excavation costs in the bid forms. Ms. Deakins reported draft language was included in the Board's November meeting notes with comments due

by December 1, 2006. There were no comments submitted. Chair Lynch noted CPARB should take formal action on the issue at its January meeting.

Mr. Johnson conveyed there are other issues that require further consideration in the areas of owner/operator, subcontractor and responsibility criteria, and allowances on public bodies.

Data Collection and Draft Report – Darlene Septelka

Ms. Septelka provided a PowerPoint presentation on the “Preliminary Capital Project Data Review.” It is the first preliminary review of the data. Some of the data received was corrupt. A new download was completed the day before and some of the information has been updated. The results are dependent on what could be reloaded into the collection database. A total of 153 projects are in the database currently, consisting of 37 Design Bid Build (DBB) and 116 General Contractor/Construction Manager (GCCM) projects. A slide showing the breakdown of completed projects was provided. Some responders did not fill in all of the data points, which affect data results. There is completed data on 28 DBB and 65 GC/CM projects. Data was not randomly selected.

Ms. Septelka reviewed data results of completed projects between and by state and local agencies.

Discussion ensued about the data submitted by King County that does not appear in the breakdown. Ms. Huey said a list of projects was submitted. Ms. Deakins and Mr. Lawrence explained the survey process. Mr. Lawrence conveyed staff will follow up on King County’s data submittal.

Ms. Septelka presented slides showing completed projects by building type for DBB and GC/CM delivery methods, construction contract size, and construction duration.

Discussion followed about whether escalation was considered with contract size, how substantial completion is defined, and how substantial completion compares with occupancy. Ms. Deakins said substantial completion usually means the facility can be used for its intended purpose. Ms. Septelka said each owner individually defines what substantial completion means.

Senator Rockefeller arrived 9:40 a.m.

Schedule growth data was reviewed. In response to comments from some members, Ms. Septelka said the data relies on what an owner enters into the database. Chair Lynch noted GA defined the information requested in the instructions. Ms. Keller said the Board previously discussed various problems with reporting due to how an owner completes a project survey. The data should be collected based on the original intention. Mr. Eng asked if schedule growth could result in a negative number based on an early completion date. Ms. Septelka answered yes. Subcommittee members were interested in finding out what the thought process was in the schedule growth spike.

Mr. Absher asked how the report will be used. Ms. Septelka said it’s a preliminary review of the data by the subcommittee for the CPARB. The subcommittee will produce a more detailed report incorporating input from Board members. Chair Lynch added the Board wants to demonstrate how alternate delivery method processes have worked on previous projects when pursuing the issue with legislators. The data will be condensed into several bullet points. Mr. Absher said he is uncomfortable using the data because it’s misleading because the sample is small and not randomly selected. Ms. Septelka said the final report will note caution when using the data. On a positive note, Mr. Absher conveyed that the Board can say it has a system it can use to accurately track project information. Mr. Johnson and Ms. Yang agreed with Mr. Absher’s

comments and concerns. Mr. Absher added it will require a full-time position to ensure that the data collection activity is successful. Ms. Yang added it will take time for the system to mature.

Ms. Septelka reviewed the remainder of the slides and data on the following topics:

- Schedule growth within 5%
- Delivery and construction speed
- Cost growth within 5%
- Intensity of delivery
- Formal claims
- Quality standards
- Whether the project was completed to meet the owner's schedule expectation
- Cost growth
- Whether the project was completed to meet the owner's cost expectation
- Contract changes
- Claims and protest

Chair Lynch said GA would like to provide Ms. Septelka with additional resources over the next month to generate more information and to review data appearing suspect. The goal is that the Board is confident with the data in time for the next session without many disclaimers. The focus could be on the "yes/no" questions.

Discussion ensued about the security of the information provided, such as anyone accessing a project and changing the information. Mr. Lawrence responded that security of the system is minimal. Ms. Septelka added issuing project specific passwords to owners would help.

Ms. Deakins and Ms. Crowson thanked Ms. Septelka for her hard work. Ms. Crowson said one issue is how the Board will manage the data on an ongoing basis.

Chair Lynch stated it's a resource issue for the state if a person is needed to monitor the data. The Board might want to forward a recommendation suggesting a position within the Office of Financial Management (OFM).

Ms. Septelka said she and GA staff will work on the data over the next month and report to the CPARB in January.

Chair Lynch recessed the meeting from 10:20 a.m. to 10:39 a.m.

Continue Subcommittee Reports

Language Review – Rodney Eng

Mr. Eng reported the Language Review Subcommittee attempted to draft language previously agreed to by Board members but not included in the draft document. The subcommittee reviewed the entire document and reworked areas where language was vague or unclear without making substantive changes to the proposed legislation. Members incorporated other language changes deemed appropriate by consensus. Proposed language where there was no consensus was flagged. The subcommittee tried to highlight all of the changes whether there was agreement, disagreement, or further work needed. The product was forwarded to the bill drafters. He noted the code reviser also made some changes. Mr. Nicholson acknowledged some language changes were missed. The Board can fill in the gaps with its review of the draft legislation.

Review Draft Legislation

Ms. Reilly referred to two draft documents. She said she and Mr. Nicholson reviewed the Code Reviser's draft dated November 8, 2006 page-by-page. Changes are highlighted in the December 13, 2006 document. She reviewed the changes since the last meeting beginning on page 3. Item (iv) on page 8 needs further clarification. Further work is needed for items (f) and (3) on page 9. Concerning (3), there is no wording that details how a public body makes a submittal. Item (f) on page 10 also needs some refinement work. Related to item (3) on page 11 she asked if the committee will use the same recertification process it used with issuing the initial certification. Ms. Yang replied no. Ms. Reilly said the renewal process should be clarified and that there is no process identified for submitting applications for certification.

Mr. Kommers said there were changes made to the "old" 39.10 findings section. Ms. Reilly replied she has a copy of the draft language. However, the drafters inadvertently did not include the revisions in the draft. Staff will add it.

Mr. Eng referred to the November 8, 2006 code reviser document. Item (2) at the bottom of page 8 states a public body seeking to use the Design-Build (DB) or GC/CM contracting procedures must submit any information required by the committee to the committee. Ms. Reilly said a question is at what point the 60 days begins to run. Mr. Eng said 60 days provides adequate time if for some reason the committee did not meet once a month. Ms. Reilly said it's important to define the 60-day timeline and the committee's meeting schedule.

Mr. Kommers said some language was missed within (5) on page 17 that the CPARB needs to approve that states, "Except for utility projects, this process does not authorize the public body to procure operation and maintenance (O&M) services for any period longer than three years." The details are noted on page 21 of the November 8, 2006 document. Mr. Eng noted the subcommittee agreed language stating, "and the amounts paid in honorarium by other public bodies for similar design-build procurements" should be deleted.

Ms. Reilly continued with the review of language changes since the last meeting, picking up at page 24. Discussion ensued about Section 307 beginning on page 27. Ms. Reilly asked whether "subcontractor eligibility" and "bidder responsibility" are the same or two different matters. Mr. Eng replied they are the same. Mr. Absher said the language is not clear.

Discussion followed about the status of Section 308, "Subcontract Agreements," and whether the list of public bodies authorized to use job order contracting (JOC) was expanded.

Members referred to a "CPARB Decision Issues" document dated December 14, 2006, and discussed language revisions beginning with, "reimbursement for private sector members and subcommittee members," on page 5 of the November 8, 2006 draft. Ms. Deakins said current language reads legislative members and public bodies can be reimbursed, but not members representing the private sector. The proposal is to strike the words, "representing an employer" so that private sector members can be reimbursed for travel. Mr. Eng suggested eliminating the entire exception language. Mr. Absher pointed out there are a number of subcommittees and other volunteers that would then be eligible for travel reimbursement. Mr. Eng stated he is currently reimbursed for his travel to attend subcommittee meetings. Mr. Absher said one issue is whether the reimbursement applies to a Board member attending subcommittee meetings or all subcommittee members.

Discussion ensued about how CPARB is similar to other state boards, such as the Building Codes Council where all members - public owner or private sector representatives are reimbursed for travel. Ms. Keller said

subcommittee chairs should also be reimbursed. She indicated that she and Ms. Huey agreed that Ms. Septelka and others required to attend and report to the CPARB should also be reimbursed for travel expenses.

Daniel Absher moved, seconded by Rodney Eng, for all CPARB members, review committee members, and any subcommittee chairs, to be reimbursed for travel to CPARB, review committee, and/or subcommittee meetings. Motion carried.

Members reviewed "Project Review Committee" appeal language. Mr. Eng said the intent is for the appeal to occur within seven days of a final determination and that the appeal must be decided at the next regular meeting of the CPARB.

Rodney Eng moved, seconded by Daniel Absher, to accept the language as stated at the top of page 9, subsection 1, (f), for project review.

Mr. Absher and Mr. Eng described the intent of the language.

Motion carried unanimously.

Rodney Eng moved, seconded by Nora Huey, to approve the same language accepted for Section 106, 1, (f), as drafted in the December 13, 2006 version of the code reviser's bill for public bodies' certification. Motion carried.

Significant discussion ensued about the Project Review Committee certifying public bodies to use the DB or GC/CM contractor procedures for a period of three years (Section 1 on page 9). Ms. Yang conveyed that higher education's position is that certification is for a six-year period. If the decision is three years, higher education is interested in further consideration of the recertification process. Chair Lynch clarified current legislation provides for certification for a three-year period. Presumably, public owners would follow the same process to certify again. Mr. Eng said he talked to his constituents about the issue and cities have a similar concern as articulated by Ms. Yang. A period of three years is too short. There may be ways to address concerns with recertification, but there was no consensus.

Chair Lynch said a public entity that is large enough to be certified is unlikely to change significantly in three years versus six years. He said he is comfortable with a six-year timeframe.

Mr. Kommers said through discussions at the subcommittee levels on a process where public owners are required to submit each project to the review committee for review and approval, or for review and comment for experienced owners, the process for certification was redesigned. Three years makes sense if an opportunity for a mid-course correction during renewal of the program is necessary. Specialty contractors are unable to support a period longer than three years.

Mr. Johnson said he understands the concerns. The current certification process requires a public meeting. A public owner (such as the university) describes its qualifications, capital plan, intended use of contracting procedures, and answers any questions the review committee might have. The certification process does not seem onerous.

Mr. Absher said an advantage is a public owner not having to present every project at a public meeting. He said he understands why an owner would prefer a longer timeframe. However, the proposal is not a burden compared to the current process. Ms. Yang offered that there is no project review board in current statute. She

described the university's procedure. Higher education's position has been to inform with a hearing of its own rather than bringing each proposal to a review board.

Mr. Eng suggested at the three-year junction, an owner is recertified except for cause. If there is a protest, the committee can hold a hearing to determine whether the complaint is meritorious and determine whether the public body should be recertified. If the complaint has no merit or there is no protest, the public body is recertified for an additional three-year period.

Discussion followed about whether the information required for initial certification is required again for recertification. In response to a question from Mr. Bowman, Mr. Eng said an owner could project its intended use of alternative contracting procedures for a period of six years. A concern is an owner undertaking a new certification process if there are no complaints. The owner is required to submit project data for each project using the DB or GC/CM delivery methods.

Discussion ensued about the proposed certification/recertification processes. Mr. Eng added the CPARB and/or the Project Review Committee could raise a complaint. The committee can decertify a public body at any time for cause.

Mr. Absher reemphasized that the issue is the public hearing. "We've" traded a public hearing on every project to one public hearing every three years. The general contractors care a lot about the hearing. He said he is unable to support eliminating the public hearings. If the length of recertification is a problem, a compromise is a five- or six-year certification period with a hearing required on all projects.

Mr. Johnson conveyed that the Board should stay apprised of GC/CM projects. The recertification provides a check-in. He said he doesn't understand why a recertification after three years is problematic versus requiring a public hearing on a project-by-project basis.

Chair Lynch said the Board is attempting to reauthorize Alternative Public Works (APW) for six years. He said he doesn't understand why a meeting at the mid-point is onerous.

Ms. Keller stated public hospitals and schools intend to bring all projects to the review committee.

Senator Rockefeller said he views the Board and review committee as a proxy for protecting public interest and ensuring transparency and accountability. The concerns that led to establishing the Board reflect less than full confidence about the manner in which the state was providing ground rules and expectations for those using APW. It will be difficult to sell the six-year, one-time only, approach. A three-year interval is appropriate. He said he agrees that a three-year recertification is not particularly onerous. The Legislature will be more comfortable with a review at the midpoint of the reauthorization.

Representative Kristiansen said members should look at the reason the Board was created by the Legislature. He said he is interested in a process that provides transparency and accountability. The Legislature is interested in what's happening in the process. If the Board decides not to hold hearings, the Legislature could amend the proposal drastically. As a member of the Capital Budget Committee, Representative Kristiansen said there is a concern with the current environment as well as the future. The Legislature wants a transparent process.

Mr. Absher suggested members discuss language during the lunch break.

Chair Lynch recessed the meeting from 11:50 a.m. to 12:39 p.m.

Continue Reviewing Draft Legislation

Mr. Eng summarized three approaches for the recertification issue as the proposal as outlined in draft legislation, which is 1) a three-year certification with a full certification every three years, 2) a three-year certification with an abbreviated single recertification process (the certified public body would submit updated information to the committee and the committee could choose to require a full public hearing or recertify the public body for an additional three-year period), and 3) a six-year certification requiring public owners to continue with the current public process set forth in statute (individual public hearings on every project) and the owners are also required to provide notice and information to the CPARB as the central reporting point.

Mr. Bowman asked if the review committee would take public comment at the initial three-year renewal point. Mr. Eng replied the decision to require a full hearing and/or take public comment rests with the review committee. The committee can take oral and/or written comments at any time. Mr. Lynch noted the committee's regular meetings are open, public meetings.

Mr. Absher added those with concerns will have representation on the review committee which provides another avenue to forward concerns or complaints.

Discussion ensued about whether the difference between a public meeting and a public hearing, and the committee making a decision whether to require a hearing on recertification followed. Ms. Reilly said under the open public meetings act, any decision by the committee is public requiring a public meeting for recertification. Mr. Absher suggested changing the wording "public hearing" to a "full hearing."

Daniel Absher moved, seconded by Rodney Eng, to accept Option 2, a three-year certification with an abbreviated one-time recertification. Owners must submit updated information and the committee can choose to hold a full hearing on recertification.

Discussion ensued about what triggers a full public hearing. Mr. Eng stated the key is a majority of the committee will take formal action at a public meeting or decide to require a full hearing if necessary at a public meeting. Dialogue about how to draft language for legislation followed.

Mr. Bowman offered a suggested amendment that a full hearing is held if any member of the Project Review Committee requests a hearing rather than by majority vote. Mr. Eng said he finds the suggested amendment objectionable because it should be a committee decision and not an individual decision. Mr. Absher suggested the proposal is a significant change and should be considered separately.

Motion carried.

John Lynch moved, seconded by Rodney Eng, that a full hearing is required if any member of the Project Review Committee requests a hearing, and that the threshold level to determine whether the concern raised about certification or recertification is sufficient to trigger a full hearing. Motion failed.

Daniel Absher moved, seconded by Dave Johnson, to accept language that when a GC/CM, owner, or DB rejects all proposals that they provide reasons for rejection in writing to all proposers.

Mr. Absher said the proposal is a compromise for the subcontractors, and one he can support. It is a good policy to provide reasons. Ms. Crowson agreed.

Mr. Eng conveyed the rejection of the all bids topic resulted in heated discussion at the last legislative session. The matter was left unresolved and that the CPARB is the wrong place to solve the broader issue.

Discussion followed about someone contesting the reasons for rejections. Mr. Absher said a “silly” reason could lead to a finding of being arbitrary or capricious by the public agency. Mr. Kommers pointed out the Governor previously vetoed legislation about rejecting all bids and encouraged stakeholders to revisit the issue. Ms. Huey said she believes it was an industry-wide issue that affects public works overall. Perhaps it’s a different matter if the GC/CM industry agrees to provide written explanation to its subs. It’s been expanded into the DB arena. A concern is the potential for risk exposure for smaller cities and counties.

Chair Lynch offered that it’s GA’s standard practice to provide written explanation when it rejects all bids. It’s a reasonable way to conduct business.

Mr. Probart conveyed that it is a significant issue for the city family in general. There is a broader picture about how cities view reject all bid language for APW. People not in the room will read the proposal for the first time and raise it as a flag for other issues that could jeopardize the entire bill.

Mr. Berry said from an average citizen’s viewpoint, it is logical and rational that major decisions made by a public entity have adequate public explanation around it so people can determine whether public entities are performing in an appropriate manner. It creates a lack of transparency when no explanation is given about major processes.

Mr. Eng said the Board could consider the matter as part of the industry-wide issues if it will put the entire bill in jeopardy.

Mr. Absher conveyed that the DB process is the most expensive delivery method. Not giving reasons for rejecting all bid proposals is bad public policy.

Mr. Eng outlined the process Seattle uses when rejecting proposals. The city is required to pay the honorarium to everyone if it rejects all bids.

Discussion ensued about how the review committee or CPARB could track this type of information when there are no reasons given for rejecting all bids and whether it’s part of the Board’s role to evaluate non-projects.

Ms. Septelka said a question could be added to the survey to help track the issue.

Motion carried 5-2. Ms. Yang abstained.

Chair Lynch reviewed remaining issues. Members raised the following additional issues:

- Consideration of language Mr. Bowman submitted about qualified owners.
- Insert the “old #2” under section 105 back into the final draft: “require public bodies using DB or GC/CM contracting must submit to the committee any information required by the committee.”
- Language that was missed within (5) on page 17 that the CPARB needs to approve: “Except for utility projects, this process does not authorize the public body to procure operation and maintenance services for any period longer than three years.”
- Subsection 204, item #6, was deleted by the language subcommittee and has not been approved by the Board.
- There is an interest to add qualified owners to the JOC authorized list.

- The one-step process allowed for DB.

Mr. Absher said the language subcommittee should review the draft to verify all language has been added. Mr. Eng agreed. Chair Lynch suggested the Board should attempt to take action on the larger issues so the drafters can finish up the draft document.

Discussion followed about negotiating the maximum allowable construction cost (MACC) when design of the project is at least 90% complete and the contractor and owner agree.

Mr. Absher said some public owners have expressed a desire to soften the language and say something similar to, "unless parties agree to set the MACC earlier."

Mr. Eng said owners believe a 90% threshold is reasonable as long as the parties truly agree. He suggested additional language as follows: "The contractor's willingness to agree to set the MACC at less than 90% may not be considered at all in the selection process." Mr. Absher indicated that the language doesn't address his concern and he is unable to support the revision.

Ms. Deakins referred to earlier discussions where an owner has the ability to negotiate the MACC earlier if the parties agree absent legislation. Mr. Lynch said even if no one complains, an auditor might.

Rodney Eng moved, seconded by Nora Huey, that the MACC should be set at 90% unless the parties agree to set the MACC at a different time, provided the public body may not consider the contractor's willingness to agree to set the MACC earlier than 90% at all in the selection process. Motion carried 4-3. Ms. Crowson abstained.

Members discussed item #4 within Section 403, JOC Requirements; i.e., At least 90% (current law is 80%) of work contained in a job order contract must be subcontracted to entities other than the job order contractor.

Discussion followed about the basis for changing the threshold from 80% to 90%. Mr. Kommers said he will convey the comments to his constituents for consideration.

Mr. Bowman reviewed proposed language that public owners should demonstrate sufficient qualifications and capabilities to manage and make decisions about alternative contracting procedures, including enough personnel on staff with experience to manage the project team.

Ms. Keller said she agrees. However, small hospital projects in particular might hire out a team to manage a contract because it is unable to afford full-time contract management staff. She said she objects to the words "on staff." Several members agreed. Mr. Eng proposed two additional changes:

- Strike "with a total contract cost over \$10 million)" language and replace "or" with "of."
- Eliminate paragraph (v) because the points are covered in (iii).

Discussion followed about measures to ensure contracts not written by staff are comprehensive, the process small hospital districts utilize, that the Board could condition authority, and declaring a \$10 million threshold eliminates the potential for a number of public owners to take advantage of the delivery method.

Ms. Murray advocated for lowering or removing the \$10 million threshold entirely and letting the Board do its job.

Mr. Bowman conveyed that he is comfortable with striking the \$10 million language provided the remainder of the paragraph does not change. The wording as proposed does not preclude owners from hiring consultants to assist with APW processes. It provides further protection for the public good and owners as stewards of public money.

Mr. Berry conveyed he is currently working under contract for the City of Auburn managing five different projects. None of them are APW currently, but could be in the future. Auburn does not employ staff with the experience members are describing. His firm is not in the DB business but provides project management services. The language as proposed ensures cities like Auburn will not pursue alternative contracting. Cities are locked out of the process because of the \$10 million threshold.

Mr. Vaught said the concept behind the CPARB was to allow APW procurement and see how it works. Very few public owners would have qualified with similar language provisions.

Rodney Eng moved, seconded by Nora Huey, to incorporate into Section 105 (1) (c) (iii) in subsection (b) the concept of the language Mr. Bowman proposed, and within subsection (e) add the following language, “including personnel with experience managing projects of similar scope and size to the project being proposed.” The motion does not include adding paragraph (v).

Further dialogue about how “on staff” is defined followed. Mr. Eng noted the intent of his motion is to capture both consultants and personnel.

Ms. Deakins said the committee review section does not refer to the project management requirement for the public body. It’s provided for in Sections 203 and 302 and states in part, “... employment of staff or consultants with expertise and prior experience in the management of comparable projects.” Mr. Eng conveyed the language subcommittee will refine the language.

Motion carried. Mr. Kommers opposed.

The Board considered language stating, “Except for utility projects, this process does not authorize the public body to procure Operations & Maintenance (O&M) services for any period longer than three years.” Mr. Kommers conveyed some entities include O&M of a facility in the procurement of DB. It was not his intent that the DB statute provides a procurement means for 5, 10, or 20 years for maintenance of a building. However, there should be an exception for utility projects.

Ms. Yang voiced concern that three years is not a sufficient life cycle for DB.

Mr. Bowman said it seems prudent to not include DB O&M in the bill. If public bodies want to use DB O&M, they should bring it forward with a bill proposal to the Board for consideration next year. It is a large expansion with another realm of public bodies.

Mr. Eng stated the cities respectfully disagree with Mr. Bowman’s analysis of current state law. Public owners have the authority to procure O&M. One question is whether the Board should limit that authority. Discussion ensued about whether the procurement process described by Mr. Eng is provided under DB.

Mr. Absher asked if the Board would be better served by revising the alternate procurement statute to include DB O&M. Any change should be clear, consistent, and uniformly applied. Mr. Bowman concurred.

Chair Lynch said that from an owner's point of view, GA is interested in O&M authorization. However, from a legislative point of view, he said he is concerned about any provision that creates a problem passing the draft legislation as a whole.

Ed Kommers moved, seconded by Carolyn Crowson, that within Section 2 of the DB statute, insert the concept of the language, "Except for utility projects, the DB process does not authorize the public body to procure operation and maintenance services for any period longer than three years." Motion carried 5 to 3.

The Board discussed interest in adding qualified owners to the JOC authorized list. Chair Lynch said the Board previously voted on the language proposed in the draft. He suggested if there is no one present to advocate a change that the Board consider the next issue on the list.

In reply to brief comments from Mr. Goldsmith, Chair Lynch explained an owner is not able to use GA's JOCs unless they also have the authority. Chair Lynch asked if the Board would support any public agency's ability to utilize GA's JOCs.

Mr. Johnson emphasized the Board has discussed JOC and who is authorized to use the delivery method several times. Labor believes substantial expansions have occurred already in the number of JOCs and the amount awarded. Labor is opposed to expanding JOC to any other body at this time.

Dialogue followed about the maximum dollar amounts proposed in new Section 404. Chair Lynch said paragraph (2) on page 36 should state two and not five work orders. Ms. Yang said there is conflicting language between paragraphs (1) and (2) about the maximum dollar amounts for work orders. Chair Lynch conveyed staff will follow up and correct the language accordingly. It could be the second paragraph is not necessary.

Mr. Absher described the one-step process proposed for DB within Section 204. He said a two-step process is appropriate.

Rodney Eng moved, seconded by Olivia Yang, to eliminate the one-step process idea. Motion carried unanimously.

The Board discussed the DB threshold of \$10 million currently in the draft. Chair Lynch said several entities are interested in lowering the dollar amount or removing it completely.

Mr. Probart spoke in favor of lowering the threshold and noted Washington State Department of Transportation (WSDOT) has a \$2 million limit.

Discussion followed about the Board's previous debate on the issue. Chair Lynch agreed members have debated the issue and understand the different points of view. Mr. Absher said the Board voted on the matter last month. Mr. Goldsmith stated it was his impression the prior motion was for drafting purposes only. Chair Lynch asked if there was new information or input from member constituents. Mr. Absher conveyed the November minutes include language that the decisions are not final until a vote is taken on the final draft bill.

Rodney Eng moved, seconded by Nora Huey, to eliminate the \$10 million threshold for Design-Build.

The Board discussed unique differences between construction and transportation projects, the DB delivery method, and the project review role of the Board.

Mr. Eng commented on the lack of DB data. There is no vehicle to collect data for DB projects under \$10 million if public bodies are unable to use the APW method. In reply to comments from Mr. Bowman that there is no comprehensive data or analysis for DB projects above \$10 million, Mr. Eng disagreed and stated all three projects have been successful.

Mr. Johnson conveyed he's not opposed to DB, but is concerned about removing the floor.

Carolyn Crowson offered an amendment to the motion to remove the \$10 million threshold and authorize the CPARB to determine the appropriate threshold.

Mr. Bowman said comparing construction and transportation projects is not an effective comparison or a reason to modify the threshold. General contractors are concerned about their ability to compete particularly with DB projects. The Board previously endorsed the \$10 million threshold and should move forward.

There was no second to the amendment to the motion.

Further dialogue followed about transportation projects at the city/county level. Mr. Eng suggested allowing cities and counties to use DB for projects similar to DOT's with a \$2 million threshold subject to Board review and approval. Ms. Deakins asked whether the review committee should also look at DOT projects.

The motion failed with a 4 - 4 split vote.

Mr. Absher said that setting the MACC at 90% and keeping the DB threshold high are two important issues to the general contracting community. It is unlikely the AGC and others in the contracting community will support the bill as it's currently drafted.

Ms. Huey asked if there was support from members to lower the DB threshold to \$2 million for transportation and public hospitals projects with Board approval. Mr. Absher replied transportation issues are an easier sell compared to hospital proposals. Mr. Bowman commented that public hospitals shouldn't receive special treatment.

Chair Lynch reported staff will incorporate the decisions of the Board to substantially complete a working draft document. However, there are some issues members will likely revisit at the January meeting. The language review subcommittee will meet to clean up the language. The Board should focus on any "fatal flaws" before finalizing the draft. He said he wants to report to Representative Haigh that draft bill language is substantially complete with the exception of a few areas of concern. Ms. Huey said there are a number of outstanding issues and that she's hesitant to refer to the draft bill as "substantially complete."

Chair Lynch replied the Board has made excellent progress and has worked well as a group. He thanked everyone for their work to develop a draft bill.

Discussion ensued about potential outstanding issues members will try to tackle next month that could include the DB dollar threshold, DB O&M, the "90% issue," and the reject all bids language. Chair Lynch said it's important that the Board collectively reach a consensus on the entire proposed APW bill.

Adjournment

Chair Lynch adjourned the meeting at 3:15 p.m.

John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services