

CAPITAL PROJECTS ADVISORY REVIEW BOARD
Office Building 2
1115 Washington Street SE
Conference Room SL-03
Olympia, Washington
February 8, 2007
9:00 AM

Final Minutes

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

STAFF & GUESTS

Nancy Deakins, GA	Mike Purdy, University of Washington
Searetha Kelly, GA	Joe Ward, WA Parks Department
Cheri Lindgren, Puget Sound Meeting Services	Rick Slunaker, AGC
Jim Anderson, Burton Construction	Alan Nygaard, University of Washington
Donna Gregg, ESD #112	Daniel Galvin, Attorney General's Office, (WSDOT)

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:08 a.m. A meeting quorum was attained. Everyone present provided self-introductions. It was noted that Mr. Mequet and Ms. Huey will vote on behalf of Cities/Counties/Ports today.

Approve Agenda

In response to a question from Ms. Yang, Ms. Deakins noted the "CPARB Decision Issues" paper will be covered under the "Update on Bills" and "Other Bills of Interest to CPARB" agenda items.

Mr. Absher moved, seconded by Ms. Yang, to approve the agenda as presented. Motion carried.

Approval of January 25, 2007 Meeting Minutes

The following changes were requested to the January 25, 2007 minutes:

- Within the ninth paragraph on page 9, strike, “Mr. Kommers opposed.”
- Revise the first and last sentences within the first paragraph following the three bullet points on page 5 to read in part as follows: “Ms. Keller *inquired about* public hospitals,” and, “Ms. Keller added... presented to the *Public Hospital District Review Board (PHDRB)* for review.”
- Within the eighth paragraph on page 6, revise it to read, “Mr. Mequet said he agrees with all the proposed changes with the exception of the rigidity of the *90% design definition.*”

Mr. Mequet moved, seconded by Ms. Crowson, to approve the January 25, 2007 minutes as amended. Motion carried.

Public Comments

Jim Anderson, Project Manager, Burton Construction, Spokane, said Burton Construction is a small minority business with 40 employees averaging \$12 million annually in revenues. He said he is specifically interested in the Job Order Contracting (JOC) portion of House Bill (HB) 1506. The company currently has two JOC contracts; one with Spokane public schools and a JOC with Washington State University. Both projects are going well. He said he would like the legislation to offer use of the JOC delivery method to other public bodies. Mr. Anderson asked that the Board revise the subcontracting percentage for JOC from 90% (draft proposal) to 80% (current). He outlined how contractors could benefit from the change.

Mr. Johnson arrived at 9:20 a.m.

Mr. Anderson said language in the bill encourages the use of women and minority owned businesses. However, women and minority owned businesses are being told they cannot use its own skilled work force for JOC contracts. There appears to be a disconnect. The current 80% is somewhat restrictive. Increasing it to 90% is not good for the program. Mr. Anderson said he appreciates the Board’s hard work.

Mr. Absher and Mr. Kommers indicated that Mr. Anderson raised some good points.

Discussion ensued about the difference and opportunities of subcontractors doing work for a JOC versus a general contractor. Burton Construction distributes the work as much as possible among the subcontractors. Mr. Anderson asked if a mechanical company would be asked to subcontract 90% of its work. Several members replied in the affirmative. Mr. Kommers said he proposed an amendment at the last meeting to change the subcontracting percentage for mechanical and electrical JOCs to 70%, but the motion did not pass.

Mr. Johnson explained the JOC amendments were included with the larger bill. CPARB is charged to evaluate how the processes are currently working, but did not have much data related to JOC. There has been some expansion. A component of the bill speaks to data collection to ascertain what is occurring on the ground. Mr. Johnson said a major concern of his constituents is that there isn’t a closed system where a specific group of contractors are continually getting public works without having to go through the bidding process. He said he is not comfortable with further expansion at this point until results of the process are available for evaluation.

Brief Report from Subcommittees

Industry-Wide Issues – Nora Huey

Ms. Huey reported the Industry-Wide Issues Subcommittee met on February 2, 2007 and revised language for the responsibility bill. A significant issue discussed was a requirement that a contractor or subcontractor verify licensing of electrical and elevator subcontractors. The subcommittee drafted language and worked with bill drafters to refine it and keeping the same intent and would like the Board's approval of the amended text. Ms. Huey noted the language reflected in section 3 on page 4 of HB 2010 represents what was included in the bill that was dropped. The amended language is shown on page 4 of the February 2, 2007 meeting notes. She reviewed the new language.

Discussion ensued about adding the "confirmation" after "include" within the third line of the proposed revised text.

Chair Lynch said if the Board approves the revised language, a substitute bill is necessary to replace the current bill prior to the February 23, 2007 committee hearing.

Mr. Johnson moved, seconded by Mr. Kommers, to adopt the language proposed by the subcommittee for HB 2010, and the determination of whether to add "confirmation" will be the decision of the bill drafters. Motion carried unanimously.

Update on Bills

HB 1506

Chair Lynch reported he attended the hearing on February 2, 2007. There are four issues:

- AGC wants a \$10 million threshold for General Contractor/Construction Manager (GC/CM)
- The University of Washington wants the three-year limit on Design Build Operation and Maintenance (DBOM) removed
- Parks and other natural resource agencies want to be allowed to use JOC through General Administration (GA) (if not direct authority)
- Reexamine Design Build (DB) threshold for road, utility, and demonstration projects

Chair Lynch reported that he sensed the Legislature appreciates the Board's work and will probably accept the changes. However, CPARB loses some credibility if it comes back with a number of amendments to the draft bill.

Related to the first issue, Mr. Slunaker said the items outlined in the AGC letter to CPARB remain, such as protect a portion of the market for contractors that might not be qualified to bid on a GC/CM project by allowing opportunities for smaller projects. Use of pilot projects below \$10 million is an important issue for the broader construction industry.

Ms. Crowson said she agrees with the AGC. MWBE generals tend to be in a smaller category. The proposal for a lower threshold with review by the Board was a good idea. She said she is interested in preserving the unbundling concept.

Ms. Yang said Higher Education would be concerned if the threshold were added. When the Board voted on the package of amendments it was a fragile boat. She suggested asking the Project Review Committee (PRC) or CPARB to develop guidelines about when an owner approaches the PRC for approval.

Mr. Absher said the \$10 million threshold was part of a compromise package. It is not appropriate for the Board to move away from that now. The PRC process will address the AGC concerns. There will be very few and very limited projects with special circumstances.

Chair Lynch agreed with Mr. Absher. It is a narrow, special project that deserves GC/CM consideration under \$10 million.

Mr. Eng echoed Mr. Absher's statements. The threshold was a major piece of the compromise and accepting a PRC was a difficult decision. He urged the Board not to support the AGC's request.

Mr. Mequet said public owners will make the decision when it's no longer cost effective to use the GC/CM delivery method.

Mr. Slunaker indicated the CPARB might want to consider developing guidelines for the PRC to ensure transparency with the process. Ms. Deakins noted the matter is scheduled on the Board's meeting agenda.

Ms. Deakins noted the bill passed the House Committee by executive session on February 6, 2007. The bill now moves on to the Senate Committee with the Senate companion bill.

Ms. Huey moved, seconded by Ms. Yang, to not change the threshold for GC/CM.

Following a brief exchange, the makers of the motion withdrew the motion. The Board agreed not to take any further action.

Members discussed the second issue involving the University of Washington wanting a three-year limit on Design Build Operation and Maintenance (DBOM) removed. Mr. Kommers noted the DBOM process is not necessarily favorable for all contractors or subcontractors. He said he met with university representatives who talked about a process where a public body would come before the PRC and request authority for a DBOM project and language that requires CPARB to develop procurement procedures for the PRC. Mr. Eng and Ms. Yang said the intent is that only owners certified to use DB are authorized to use DBOM and that the PRC shall not approve more than two demonstration projects using the DBOM procedure. Ms. Yang reviewed the proposed language changes that begin on the bottom of page 2 of the decision issues document.

Mr. Absher said he's concerned about making any changes now that the bill is out of the House and on its way to the Senate. Discussion ensued about structuring a project that would still allow an owner to pursue the DBOM procedure.

Mr. Johnson said he shares Mr. Absher's concerns. Contractors don't like the idea of operating and maintaining a facility. He suggested the Board and/or the PRC look at the issue at a future date.

Mr. Absher suggested removing the language proposed by Mr. Kommers and that the CPARB address the issue over the summer. He said he would like to hear more about successful DBOM projects.

Chair Lynch said the law doesn't prohibit the university from using DBOM.

Ms. Yang said Mr. Absher's compromise is reasonable.

Mr. Kommers said he's opposed to removing the language, but supports a subcommittee to help develop the guidance.

Mr. Eng offered a proposal of adding a one-year sunset (July 1, 2008) to the proposed language. It gives the Board a year to address the problem.

Further discussion followed about the DBOM language and potential DBOM projects that might be affected by the revision.

Mr. Absher moved, seconded by Ms. Huey, that the CPARB, prior to next year's Legislative session, take action to make recommendations to the Legislature on a revision to the DBOM portion of the statute. Motion carried unanimously.

Members discussed issue #3 of Parks and other natural resource agencies wanting to be allowed to use JOC through General Administration (GA) (if not direct authority). Chair Lynch said State Parks is not requesting authority to enter into its own JOC contracts. The Evergreen State College (TESC) is interested in using the JOC process through GA.

The Board discussed other public bodies that might also be interested in the delivery method.

Mr. Eng said if the concept is acceptable, he would expand the opportunity to other public bodies (small cities, TESC, Western Washington University) to contract with GA. He said he supports the request from State Parks.

Discussion ensued about how the proposal would affect GA's overall caps. Ms. Crowson said it makes sense to allow others to use GA's process. HB 1328, Small Works Roster, recently passed the House. Both concepts will help distribute work to smaller businesses. Mr. Mequet added that smaller ports could also take advantage of JOC through GA.

In response to a question from Mr. Johnson, Chair Lynch said State Parks would be obligated to follow GA's JOC contract.

Mr. Slunaker said there are influential interests not represented that will have significant concerns about the proposal.

Mr. Eng indicated he doesn't want to jeopardize the entire bill to add other public entities.

Mr. Johnson said if the request is not urgent for parks; the Board could build a list of issues and present the list to the Legislature when asking for reauthorization money. The list of remaining and/or emerging issues validates reestablishing CPARB. The Board's work is not finished.

Mr. Absher said he was surprised to learn parks couldn't utilize JOC through GA. The Board should be very reluctant to modify the statute at this point. However, adding parks is a minor matter and is in direct response to testimony provided at the hearing. It is an issue the Board did not address.

Chair Lynch recessed the meeting from 10:26 a.m. to 10:42 a.m.

Ms. Crowson left the meeting during the break.

Representative Haigh arrived at 10:45 a.m.

Continue with Update on Bills

Representative Haigh thanked members for their work. The hearing was packed with supporters for the most part. Great testimony was given. Concerning the parks issue, the Board is ill advised to make a significant recommendation to change legislation at this time. CPARB should allow the bill to advance unchanged over the next several weeks. If the Board has reached a decision regarding state parks' request by the time the bill reaches the Senate, it can be amended in the Senate. If the bill is amended in the Senate, it has to come back to the House for concurrence. Amendments added that are controversial will slow the bill down. Representative Haigh said she is leery about adding amendments until the legislation is through the House. She recommended waiting on any amendments until one bill or the other moves through the House of origin. Amendments can be addressed in the opposite House.

Mr. Lynch asked if the Board should present minor changes to the Senate hearing on February 12, 2007. Representative Haigh replied yes and added the CPARB shouldn't change the House version right now. However, the Parks issue is new and has some value. She expressed some concern about the lack of representation and consideration about issues from the eastern Washington contingency. It behooves the Board to listen to issues and perspectives from those on the east side of the state.

Mr. Slunaker said the AGC represents many contractors in eastern Washington and he is not aware of specific concerns. Representative Haigh conveyed that she's heard information about not extending APW to the smaller size projects. Ms. Deakins said the proposed amendments will allow more public bodies to use GC/CM and Design Build (DB) procedures. A recommendation is to add six new members to the Board. There is an opportunity for the Governor to appoint representatives from eastern Washington.

Members thanked Representative Haigh for her support.

Representative Haigh left the meeting at 10:57 a.m.

Members resumed discussion about the parks request and the legal opinion issued by the Attorney General's Office (AGO). Chair Lynch said there was an assumption that agencies could use GA contracts. GA would administer a work order rather than issue a contract on parks' behalf. The request is to add language that clarifies GA could do work orders for parks.

Mr. Eng stated the bill is more credible if it moves forward without any more changes.

Mr. Absher moved, seconded by Ms. Huey, to approve the concept of modifying the language clarifying that GA can perform work orders for the State Parks Department. Motion carried.

The Board discussed issue #4 concerning reexamining Design Build threshold for road, utility, and demonstration projects. Ms. Huey stated the Association of Cities and Association of Counties are requesting the ability to perform pilot projects or a small subset of projects under \$10 million that would go before CPARB for approval. There is no language proposal at this time.

Mr. Eng explained that demonstration projects would consist of transportation type projects and proposals that are difficult to address with the GC/CM bidding process.

Ms. Huey conveyed that if it's not possible to make a change to the statute, she suggested the Board propose demonstration projects for the legislative agenda next year.

Mr. Johnson moved, seconded by Mr. Absher, to not change the statute regarding the DB threshold for road, utility, and demonstration projects, and to address the issue between legislative sessions. Motion carried.

Ms. Huey outlined concerns expressed by King County about the PRC outlined on pages 1 and 2 of the issues paper summarized as follows:

- *A provision allowing an owner to request removal of a committee member if the owner demonstrates some bias or conflict of interest.* Ms. Yang stated members have identified issues that need further review. A group (Ms. Keller, Ms. Huey, and Ms. Yang) could serve on a subcommittee to work out logistics related to the PRC, GC/CM less than \$10 million, and DBOM and present ideas to the Board for further discussion.
- *Public process for development of committee procedures.* Chair Lynch said all CPARB's activities involve a public process.
- *A provision requiring the Board to evaluate the effectiveness of the PRC, how it is functioning, timeliness, ease of use, and overall value of the process.*

Ms. Huey said the preference is to include the modifications in the legislation. An alternative is CPARB could consider the issues in the interim.

Ms. Yang moved, seconded by Mr. Absher, to consider each of the PRC issues proposed by King County related to Section 104 only. Motion carried.

Ms. Yang explained item c on page 3, "Section 303 – Contract Award," which clarifies the intent of the contract award agreement. Mr. Kommers asked if the university is precluded from considering site investigations currently during the design phase. Ms. Yang said the current language is specific and a concern is if "site investigations" is not included in the list, it is not allowed.

Mr. Eng said Seattle has had the GC/CM do site investigations as part of the pre-construction phase and there has not been a problem with the auditor. Chair Lynch agreed and said GA includes site investigations during the design phase as well.

Allen Nygaard, University of Washington, reported the issue is the language is becoming much more specific. When the language is very specific with lists, the university's attorney believes the list is what governs.

Ms. Yang said that an alternative is to amend the second sentence to read in part, "... the design phase that may include, *but is not limited to*, life-cycle cost..."

Mr. Eng conveyed that he has no problem with the change, but questions if a change is necessary at this time.

Mr. Absher said the risk of someone saying you can't do site investigations with the GC/CM method is slight. He said he is reluctant to amend the bill at this juncture and suggested the Board consider the issue in the summer.

Mr. Absher moved, seconded by Ms. Huey, to place “Section 303 – Contract Award” on the Board’s list of issues for consideration with next year’s legislative session. Motion carried.

Mr. Kommers said he’d like the record to reflect that the only change to the paragraph was to add, “constructability,” which certainly includes site investigations.

Mr. Absher withdrew his request to change “shall” to “may only” within item d, (1), on page three of the issues paper.

Ms. Yang withdrew the university’s request to add, “with the approval of the public body,” within item d, (2), on page 3 of the issues paper.

Discussion about item d, (3) at the top of page 4 followed. Ms. Yang explained that the intent to allow phased construction is not clear without the suggested amendment. Mr. Eng agreed.

Mr. Nygaard said clarifying the intent in this case is fairly critical. Different interpretations of what 90% means is highly likely.

Mr. Absher moved, seconded by Ms. Yang, that there is a risk the provision could be interpreted incorrectly and that the Board accept the clarification language and proceed to amend the bill with the proposed text. Motion carried.

Members discussed how to deal with current projects that carry over (item 3, Section 503 on page 4). Ms. Huey reviewed the current language and presented two options for the Board’s consideration. The group discussed the processes associated with options 1 and 2. Chair Lynch said if there is no change in the bill, an owner could still write a change order for the terms that are legal. Ms. Huey said her concern with the current language is the only thing an owner doesn’t have to comply with is the PRC hearing, which means an owner has to comply with all other provisions. If a contract is not signed prior to July 31, 2007, she asked what other provisions would an owner need to meet.

Conversation about process changes proposed in the draft bill for the DB delivery method followed.

Mr. Eng suggested the Board endorse option 1 and replace the current language with, “The provisions set forth within this act shall only apply to projects advertised after July 1, 2007.” The change is clean and simple.

Mr. Absher moved, seconded by Ms. Huey, to replace Section 503 with Option 1, and strike “only.” Motion carried.

Concerning HB 2009, “Trench Excavations,” Mr. Johnson noted there are signatures on the House Bill; however, there was no Senate companion bill. Chair Lynch indicated he would follow up with Representative Haigh and Senator Rockefeller.

Mr. Slunaker suggested the Board send a letter to the chair of the committee requesting a hearing. Members agreed that sending a letter was a good idea.

Discussion ensued about who will testify on HB 2010, “Responsible Bidder.” It was decided that Ms. Huey, Chair Lynch, and Mr. Johnson will testify.

Other Bills of Interest

Mr. Slunaker provided background information on HB 1765, “changing provisions concerning limitation of claims under a construction contract” (Michael M. Johnson claims case). The bill doesn’t address the prejudice issue directly but suggests a more practical approach; i.e., the claim will not be considered if the owner had knowledge of the activity and didn’t object and received a benefit. A resolution is needed and the proposal addresses concerns expressed by local government last year. He asked CPARB to support the bill.

Conversation about another substitute house bill (referred to as the school district bill) followed. Copies of a February 6, 2007 draft bill were distributed.

Ms. Huey said King County has serious concerns with HB 1765. She suggested the CPARB should oppose HB 1765. The Board could use the school district’s draft as a starting point for review by the Industry-Wide Subcommittee. The Board could consider the issue with next year’s legislative changes.

Mr. Eng said given the lack of thoughtful consideration of the issue by CPARB, it is premature for the Board to say anything. He urged members not to support the current bill. Ms. Absher stated CPARB cannot address the issue today. If the Board remains silent and the issue is not resolved this year, CPARB can consider it with industry-wide issues for the next legislative session. Further dialogue that the Legislature should address the matter followed. Ms. Huey conveyed that she supports CPARB looking at the issue with the next round of legislative amendments.

Ms. Deakins noted CPARB has gained credibility with its work on 39.10. It is important that the policymakers continue to allow CPARB to vet APW issues with the stakeholders.

Mr. Absher urged that the Board remain silent. The AGC or another organization could solve the matter this year. The Board should wait until it’s ready to address the issue.

Mr. Johnson suggested the Board should remain silent about a position concerning all of the “other bills of interest.”

Mr. Mequet expressed a concern that silence on the Board’s part could be interpreted as consent by the Legislature. He said he prefers sending a message that CPARB wants the chance to address and resolve the issue for the next session.

Ms. Huey moved, seconded by Mr. Mequet, to ask the Legislature for an opportunity to look at the issue and come to the Legislature in 2008 with a consensus bill. Motion failed (4 in favor, 3 opposed. Six votes are required to pass a motion).

Mr. Slunaker reviewed components related to Senate Bill (SB) 5047 (contractor registration bond increases) and HB 1908 (apply Washington state prevailing wage laws to out-of-state work on pre-fabricated elements). AGC is opposed to both bills.

Mr. Johnson commented that contractors are being forced out of the state (“border raiding”) and setting up shop. Contractors in Washington are required to pay the prevailing wage for pre-fabricated elements when the contractor just on the other side of the state isn’t.

Mr. Absher said if the matter is not resolved by the Legislature this year, he’d like to see the Industry-Wide Issues Subcommittee address contractor registration bond increases. The AGC and contractors in general may be able to support some increase in registration bonds. However, the proposal as written is confusing.

Mr. Eng suggested an agenda topic for next month include a planning session about matters the Board wants to look at within the next year. It could be that more than one subcommittee is needed to review all the issues.

Ms. Huey said the Industry-Wide Issues Subcommittee is reviewing its work program for 2007 at its next meeting.

Chair Lynch outlined HB 1898 (providing apprenticeship utilization requirements for school district public works projects) and HB 1919 (providing apprenticeship utilization requirements for port district public works projects). He asked if the Board has a consensus opinion it would like to voice about the bills.

Mr. Absher said CPARB should weigh in, but the Board has not discussed or debated the bills. He suggested placing the issues on a future agenda. Mr. Vaught agreed. Mr. Johnson asked that CPARB not oppose the bills.

Mr. Slunaker commented HB 1919 is limited to the Ports of Tacoma and Seattle.

Members discussed whether to reconsider changing the JOC subcontracting percentage back to 80% (90% proposed). Mr. Absher said Mr. Anderson raised some compelling arguments and reasons to reconsider the percentage. However, several members that are vested in the process and decision are not in attendance. He asked that the Board place the JOC issue on its agenda for discussion for the next legislative session.

Ms. Huey moved, seconded by Ms. Yang, to add the JOC subcontracting percentage matter to the list of issues CPARB will look at as part of next year's legislation. Motion carried.

Plan for Project Review Committee

Chair Lynch suggested deferring the topic to the March meeting.

Set Next Meeting Agenda

The next meeting is scheduled for March 8, 2008, from 9:00 a.m. to Noon. Discussion followed about the potential of needing more than one subcommittee to prioritize the list of issues developed during the meeting. Ms. Huey said the Industry-Wide Issues Subcommittee plans to discuss its 2007 work program at its next meeting. The subcommittee will present a draft work program to the Board in March. CPARB could add to the list and identify future subcommittees. Additional topics for the Board's March meeting include, "plan for Project Review Committee" and "determine issues for subcommittee(s) to address."

Adjournment

Chair Lynch adjourned the meeting at 12:31 p.m.

CPARB FINAL MINUTES

February 8, 2007

Page 11 of 11

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services