

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

**Final Minutes**

<b><u>MEMBERS PRESENT</u></b>	<b><u>REPRESENTING</u></b>	<b><u>MEMBERS ABSENT</u></b>	<b><u>REPRESENTING</u></b>
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	Gerald "Butch" Reifert	Design Industry
Rodney Eng	Cities/Counties/Ports	Representative Kathy Haigh (Vice Chair)	House of Representatives (D)
Rocky Sharp	Specialty Contractor	Michael Mequet	Cities/Counties/Ports
Nora Huey	Cities/Counties/Ports		
Terry Tilton	Construction Trades Labor		
Olivia Yang	Higher Education		
Wendy Keller	Public Hospital Project Rvw Bd		
Dan Vaught	School District Project Rvw Bd		
Larry Byers	Insurance/Surety Industry		

**STAFF & GUESTS**

Nancy Deakins, GA	Miriam Israel Moses, Rebound
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Cheri Lindgren, Puget Sound Meeting Services	Larry Stevens, MCA/NECA
Dick Goldsmith, AWP/PHD	Donna Gregg, ESD #112

**Welcome & Introductions – Chair’s Comments**

Chair Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:03 a.m. A meeting quorum was attained.

Chair Lynch reported the Board’s three bills are moving along well and have passed the Rules Committee for a second reading.

Discussion ensued about appointing someone to ensure the bills are pulled out of Rules and voted on.

**Approve Agenda**

**Mr. Sharp moved, seconded by Ms. Crowson, to approve a revised agenda to add a discussion about General Contractor/Construction Manager (GC/CM) training after the break. Motion carried.**

**Approval of February 8, 2007 Meeting Minutes**

**Mr. Eng moved, seconded by Ms. Yang, to approve the February 8, 2007 meeting minutes as presented. Motion carried.**

**Public Comments**

There were no public comments.

**Update on Bills**

Chair Lynch reported that Senate House Bill (SHB) 1506 includes a second substitute bill of comments and recommendations from CPARB's February 8, 2007 meeting.

Ms. Deakins referred members to a "CPARB Status of Bills in 2007 Session" document dated March 8, 2007. The House Capital Budget Committee (HCBC) passed the second SHB. Section 503 (how to deal with current projects that carry over) was not replaced. The HCBC revised Section 201(4) and included revisions for Design Build (DB) operate and maintain. There was some concern that state agencies would use capital funding for operation and maintenance. The proposed amendment only applies to state agency projects.

Ms. Huey said she spoke with a Washington State Department of Transportation (WSDOT) Assistant Attorney General and developed language stating that procurements advertised before July 1, 2007 would fall under the old statute. Because the old statute is no longer on the books, the language cannot refer to the old statute. Ms. Deakins reviewed the current language. Ms. Huey said King County has a DB project underway and recently evaluated its process. A potential conflict concerns Section 204 that describes the process. Currently, after the county accepts all proposals and sets a final list, there is a best and final offer (BAFO). One question is whether once an owner has set a final list the owner can't short list from that point for the BAFO or whether the owner is required to obtain a BAFO from everyone on the list.

Ms. Deakins said the issue is separate from what is needed for carryover language. Mr. Eng said if an owner is in the middle of procurement and a contract is not signed before July 1, 2007, the owner must comply with the new provisions.

*Mr. Absher arrived at 9:17 a.m.*

Ms. Huey said a second concern is the accident prevention program. It is now required in the request for qualifications (RFQ) process rather than the request for proposals (RFP) process. The issue for King County concerns the risk of exposure. She said she understood that the Board intended to grandfather in ongoing procurements. Mr. Eng said he recalled the discussion during the legislative drafting activity and that there was mixed reaction. The Board worked hard to draft improvements to the bill and whether it should apply to all projects as soon as possible versus a blanket conclusion that an owner would be grandfathered under the old rules. Mr. Kommers agreed with Mr. Eng's statements.

Mr. Eng referred to a GC/CM project proposed by the City of Kent that has not proceeded on schedule.

Ms. Huey said she believes members agreed that owners who have started a process would fall under the old statute. Ms. Deakins said the old statute states if an owner is under contract by July 1, 2007, the existing statute applies. If a project is not under contract by July 1, 2007, new rules and laws apply.

Mr. Absher suggested not initiating further changes to the legislation at this time. Mr. Kommers agreed because the bill is in the House. The Board voted for language changes in Section 503. Mr. Kommers asked why members couldn't request changes when the bill reaches the Senate. Mr. Absher questioned the level of risk associated with changing the language at this point.

Ms. Yang said she agrees with Mr. Absher and asked if a legislative change is the only way to address the two to five projects that could be affected compared to a nonlegislative solution. Ms. Huey said the preference is to address the concern versus an argument before a judge.

Discussion ensued about taking a floor amendment at this time. Mr. Eng suggested the Board leave the decision to Representative Haigh. No one wants to see the bill jeopardized. Mr. Kommers agreed.

**Mr. Eng moved, seconded by Mr. Kommers, to remind Representative Haigh that the Board approved specific language for Section 503, which remains the Board's recommendation. The CPARB requests that Representative Haigh consider whether it is wise to introduce it on the floor or retain the current language.**

Ms. Crowson suggested CPARB make a separate motion to advance the bill out of Rules and on to the floor.

Ms. Yang asked that if Representative Haigh recommends not changing the language in Rules whether there is anything that can be done about the limbo projects. Chair Lynch responded there is nothing else the Board can do. The agencies managing the projects need to work through the process.

**Motion carried unanimously.**

Ms. Deakins outlined next steps for the three bulleted changes listed under #1 on the first page of the status document.

Chair Lynch reported House Bill (HB) 2009, Trench Excavation, received a brief hearing and passed from the Committee to Rules.

Related to SHB 2010, Responsible Bidder, CPARB took action on a number of changes that were not part of the first version. The amendments have been incorporated in the SHB. Ms. Deakins highlighted changes recommended by Associated General Contractors (AGC) that were also included in the SHB.

Boardmembers discussed strategies to keep the bills moving through Rules. Ms. Tilton conveyed that Representative Haigh is not on the Rules Committee, but she certainly can influence the outcome. Labor is working with Democratic members and is confident that SHB 2010 will be pulled. She suggested the CPARB contact Rules members and lobby members to pull the bills from the "white sheets" to the "green sheets" to the "yellow" and then to the floor. A letter from CPARB sent to Representative Haigh and Senator Rockefeller asking for their support would help, as well as forwarding copies of the letter to all members of Rules, both House and Senate.

Mr. Stevens said he agrees with Ms. Tilton's strategy. Speaker Chopp, Chair of Rules, typically puts together a package of bills that are pulled with one motion. Ms. Tilton said it is also appropriate to include in the letter that the legislation proposed by CPARB merits a package pull, as the bills are noncontroversial and have been well vetted. Chair Lynch said the letter should mention all three bills. It was noted correspondence on CPARB letterhead would be beneficial, as well as a list of members and those involved on the subcommittees. Chair Lynch conveyed that General Administration (GA) staff will draft a letter and send it electronically to the Board and others and deliver the letter to the legislators.

Mr. Goldsmith said the CPARB will also need to make a concerted effort with the Governor's Office once the bills are through both Houses.

Members discussed HB 1765, Changing provisions concerning limitation of claims under a construction contract (Mike M. Johnson case). Chair Lynch reviewed background information. The school coalition presented another bill draft different from Representative Lantz's version. The initial bill was acceptable to contractors, but owners had concerns. The schools' proposed bill didn't solve the Mike M. Johnson issue. In response to Representative Lantz's request that the group work out a compromise for this session, there has been some effort to do that. AGC refined the school version, which was reviewed by a school attorney. GA met with Representative Lantz last week. If a compromise bill is not attained by March 7, 2007, advancing HB 1765 will not occur during the 2007 session. He said he anticipates it will be up the CPARB to draft language for the 2008 legislative session. The bill is currently active in Rules. CPARB will not weigh in on HB 1765.

#### **Brief Report from Industry-Wide Issues Subcommittee**

Ms. Huey reported the Industry-Wide Issues Subcommittee met and discussed setting its agenda for outstanding issues. The subcommittee identified "Notice Provision (Mike M. Johnson)" as the top priority. The subcommittee will discuss the issue on April 6, 2007 from 12:00 p.m. to 2:00 p.m., at the Northwest Carpenter facility in Kent. The subcommittee would like to schedule a pre-meeting with owners on March 21, 2007. The time of the meeting has not been determined. She said she will follow up with subcommittee members.

Ms. Huey reported the "Appropriate Contracting Laws" issue is currently tabled and "Reject All Bids" is not considered a 2008 priority. Two issues dealing with general contractor liability were combined and identified as a priority for the 2008 legislative agenda:

- Prevailing wage deficiency of subcontractors
- Trust fund contributions for defaulting subcontractors

Ms. Huey said she will follow up with Mr. Johnson to determine if "Apprenticeship Utilization" and "Subcontractor Bid Listing Statute RCW 39.30.060" are still issues. "Contractor Retention" was removed as an issue. Additional issues to consider in 2008 are as follows:

- In state preference – out of state contractors are not required to pay Washington prevailing wages
- Clean up current legislation in the areas of retainage and prompt pay
- Unsupported claims
- Prompt payment of undisputed amounts

Ms. Huey noted further work is needed to develop guidelines for responsible bidder criteria. She encouraged all owners to attend the pre-meeting on March 21, 2007.

Ms. Yang asked if the subcommittee allows teleconferencing. Ms. Huey indicated she would follow up.

Mr. Kommers pointed out that the first sentence within the first full paragraph on page 2 of the March 2, 2007 subcommittee meeting notes stating that Ms. Deakins and Mr. Ahlers stated that HB 1765 is unlikely to survive the legislative session is not an official position. Mr. Ahlers was not making a magnanimous prediction.

Chair Lynch recessed the meeting from 10:05 a.m. to 10:29 a.m.

### **Determine Issues for Subcommittees to Address**

Chair Lynch clarified that a determination about issues for the subcommittees to address will not be determined during the meeting. There is a list for discussion purposes titled, "CPARB Issues, March 8, 2007 – Discuss, April 12, 2007 – Prioritize and Assign to Subcommittees." One goal is to prioritize the list and assign the issues to subcommittees at the Board's April 12, 2007 meeting.

Ms. Deakins asked members to forward other items of interest by March 23, 2007.

Mr. Eng commented that some of the issues are not particularly controversial. The easier tasks should be given a higher priority, which will help the Board advance the list of issues.

Ms. Keller suggested the possibility of reconvening the Expansion Subcommittee to look at organization of the review boards, application packets, and similar activities. April might be too late to begin with development of the review committees and initiating the certification process to be ready by July 1, 2007. The Board could take advantage of using its two previous subcommittees to kick off the Project Review Committee (PRC) process.

Chair Lynch acknowledged the suggestion that another subcommittee help work through the issues. The Board could discuss the best subcommittee structure at the April meeting. However, there is no reason that a subcommittee couldn't meet later in March to help create a shorter list of issues.

Ms. Yang pointed out that the items under "Alternative Public Works (APW) Issues" have been discussed previously by CPARB with the exception of items #8, #12, and #13. Reactivating the Expansion Subcommittee could help to resolve outstanding issues and make room for new issues. Some public owners have finally persuaded colleagues that there will be a PRC. A goal is to roll it out in a way that works for everyone, including public owners. She agreed with Ms. Keller's point that the Board has to be ready by July 1, 2007. It is prudent to talk about the mechanics of the PRC sooner rather than later.

Mr. Eng indicated members should be thinking about who could serve on the PRC and the forms and process to recruit members.

Mr. Absher presented another issue. Specific to GC/CM projects, an owner is taking a bid and saying they'll get back to the bidder. Sometimes it's the next day, that afternoon, or a week later. He said he understood the intent was that an owner is required to disclose the bid results and scores the same day as the bid opening. He

said he would like to prevent any opportunity for “bid rigging.” The Board generally agreed to add item #14, “GC/CM Open and Public Bid Opening and Scores” to the list of APW issues.

Chair Lynch suggested having the Expansion Subcommittee meet before April 12, 2007 to begin looking at issues for the next CPARB meeting. Ms. Yang suggested the Expansion Subcommittee meet from 9:00 a.m. to 11:00 a.m. on April 6, 2007 prior to the Industry-Wide Subcommittee meeting.

Chair Lynch asked if another subcommittee is needed to talk about PRC logistics, process documentation and rules, what needs to be submitted, and how decisions are made prior to the Board’s April meeting.

Discussion ensued about how to prioritize the list of issues. Mr. Absher suggested CPARB determine the subcommittee structure and that the subcommittee(s) prioritize the list. Chair Lynch said the Board should weigh in on the priorities. He asked each member to identify their list and e-mail the lists to Ms. Deakins by March 23, 2007. The Board could start with the top five. Ms. Huey said all the APW issues are important and she thought CPARB would look at all 13. The Industry-Wide Issues Subcommittee is asking for the Board’s approval to consider the six issues listed under “Industry-Wide Issues.”

Mr. Eng said he is reluctant to say a third subcommittee is needed to help address some of the issues. The Reauthorization Subcommittee discussed many of the issues before.

Ms. Crowson said she’d like to go back and look at her original list and likes the ability to add to the list. Mr. Eng agreed. The Board previously agreed to address several of the issues identified on the summary list this year. CPARB should adopt items #1-6 as recommended by the Industry-Wide Issues Subcommittee for 2008 legislation. Ms. Deakins clarified that the issues were not necessarily fully discussed or voted on by CPARB, but only as issues to consider for the 2008 session.

Mr. Absher said the 13 issues under APW should be assigned to subcommittees and any new issues should be prioritized.

**Mr. Absher moved, seconded by Mr. Eng, to assign the 13 issues listed under APW to subcommittees, that new issues should be prioritized, that the Board accept the Industry-Wide Issues Subcommittee’s identified priorities 1-6, and that members can submit new issues for prioritization at the April meeting.**

Ms. Keller said she’d like to refer item #13, “Project Review Committee (2SHB 1506)” to the Expansion Subcommittee and identify a work group to bring recommendations from the Expansion Subcommittee to the Board for consideration.

**Motion carried unanimously.**

**Ms. Huey moved, seconded by Ms. Yang, to forward PRC to the Expansion Subcommittee and that subcommittee chairs will develop a working group to begin working on the issues.**

Mr. Eng said he doesn’t disagree. The next agenda item is to talk about a “plan for PRC.” He suggested deferring action until members have had a discussion that will help inform a decision.

**The Board agreed to defer action on the motion until later in the meeting.**

**CPARB Enforcement Role & Purpose**

Mr. Absher referred to a *Seattle Daily Journal* article about a library system using the DB process for five new branches in an effort to open libraries sooner and save some funds. The library system admitted it packaged projects to meet the DB threshold requirements, which violates the statute. Mr. Absher asked about the enforcement mechanism. Chair Lynch responded that the statute establishing CPARB states an assignment is to advise the Legislature and collect data and provide the Legislature with a report. Data could include the library's action. CPARB does not have enforcement authority.

Mr. Eng indicated the Board should not have an enforcement role. The specific problem raised in the article could have been solved with the creation of the PRC. A review committee would not have approved the library's proposal to use the DB process as outlined in the newspaper article.

Mr. Absher said an owner might not bring a project to the PRC or an owner could bring a project to the PRC that is not approved and proceed anyway. Chair Lynch said another possibility is that King County could become certified and proceed with a similar project without PRC review and/or approval.

Discussion ensued about the Board providing the Legislature with reports that include feedback and recommendations concerning issues observed within the industry that are brought to CPARB's attention, and that auditors typically provide enforcement on behalf of the owners. Chair Lynch added that reports provided to the Legislature could also be forwarded to the Auditor's Office and legislators.

Mr. Kommers emphasized that he's not suggesting the Board act as the enforcement authority. A grievance process could help owners learn what they did wrong. It is the CPARB's job to listen and record (through data collections) those things that are contrary to the intent.

Mr. Absher suggested that CPARB could send a letter to an entity that is violating the intent of the statute.

Mr. Eng said although he doesn't disagree with Mr. Absher, another approach is to amend the statute that states the contract is void if an owner does not follow the procurement method requirements.

Mr. Goldsmith said once the PRC is in place, the committee or CPARB could issue a press release to public owners and the State Auditor's Office announcing their role, outlining the process, and that owners are required to comply.

Ms. Yang stated the enforcement options may appear to be extreme, but are still better than a law that is written in reaction to one bad example.

Discussion followed about Public Facility Districts (PFDs) going before the PRC for review and approval. The Board agreed to add "Enforcement" as a new issue #15 under APW issues on the summary.

### **General Contractor/Construction Manager (GC/CM) Training**

Ms. Yang reported last October, the University of Washington (UW) and the AGC Education Foundation sponsored a one-day GC/CM training session. A two-day session is scheduled for May 9 and 16, 2007. Mr. Probart, Association of Washington Cities (AWC), approached Mr. Absher about CPARB participating in the training to talk about what's new in the law so that those currently practicing, as well as owners looking to practice the procurement method, become familiar with the new law. The training format will be similar to what was used last October.

Mr. Goldsmith said there are owners from eastern Washington interested in attending the training. He asked if the sessions could be combined. Ms. Yang said she will bring the issue to the planning committee at the March 16, 2007 meeting.

Conversation followed about ways CPARB could support and/or sanction the training.

Chair Lynch said the question about how an owner demonstrates competence and abilities could be addressed when the group and/or the task force begins to assemble the PRC and procedures.

Mr. Vaught said the School District Project Review Board could circulate an advertisement and/or an agenda.

Mr. Absher suggested issuing a "CPARB Certificate of Attendance" to demonstrate the Board's support for alternative procurement training. Member organizations could help co-sponsor the training.

**Mr. Eng moved, seconded by Mr. Absher, to endorse the training session.**

**Dick Lutz, Centennial Construction**, asked if the agenda includes all alternative procurement or just GC/CM. Ms. Yang and Chair Lynch replied that the 2007 legislative session is focused on GC/CM.

*Mr. Absher offered a friendly amendment that a representative from the CPARB (Ms. Yang) participate on the planning committee. Mr. Eng accepted the friendly amendment.*

**Motion carried unanimously.**

### **Plan for Project Review Committee**

The Board discussed strategies about the PRC such as how the process works, what a submittal should include, and what constitutes passing and/or failing. Chair Lynch commented that the Hospital Review Board has done a thorough job of defining similar tasks. A suggestion was that the Expansion Subcommittee could initiate the work. Ms. Keller expressed her support to establish a smaller task force to present ideas to the Board at the next meeting. Mr. Vaught, Ms. Keller, and Mr. Goldsmith volunteered to serve on the task force with Ms. Yang coordinating the group. Ms. Keller offered to forward copies of sample documents for the task force's review.

Discussion ensued about how to recruit candidates to fill PRC positions. Mr. Eng suggested Board members ask potential candidates to submit letters of interest so that the Board can take action and appoint members to the PRC. At one time, there was a list of criteria outlining the number of members, how many panels, and representation by each industry. Chair Lynch said the task force could develop a list of potential candidates at the April 6, 2007 meeting and begin working out the mechanics of the PRC.

Mr. Absher suggested potential nominations could submit their resume or qualifications in advance of the next meeting.

Discussion ensued about creating a balance on the PRC and that potential candidates must meet the requirements outlined in section (2) on page 7 of the 2SHB 1506. Ms. Keller added that it is important candidates to have experience in the construction industry. Ms. Deakins said developing an announcement outlining expectations and responsibilities and how to apply would be helpful.

Mr. Lutz asked if a CPARB member could also serve on the PRC. Chair Lynch affirmed it is possible.

Ms. Keller said a larger pool of candidates would give the Board the ability to assemble more than one review committee if needed.

Members discussed placing an advertisement in the newspapers, including reaching out to eastern Washington. Ms. Keller volunteered to draft a letter of interest that could also function as an advertisement. Ms. Deakins offered to work with Ms. Keller.

Mr. Eng said the notice should be fairly general. It is important that the invitation welcomes interest from all facets of the construction industry.

Mr. Goldsmith offered to work with Ms. Keller. The letter should state that travel expenses are reimbursed.

Chair Lynch said using GA's and/or CPARB's website would help save on advertising costs.

Mr. Goldsmith, Mr. Absher, Ms. Deakins, Ms. Yang, and Mr. Johnson (Ms. Tilton's suggestion) offered to review the draft letter. Chair Lynch said resumes and/or letters of interest should be forwarded to Ms. Deakins or Ms. Kelly. GA staff will bring the materials to the Board's next meeting. It was noted the group is more than willing to accept e-mail submittals. Members agreed to leave the deadline open until the positions are filled.

### **Set Next Meeting Agenda**

Members discussed a draft agenda for the April meeting:

- Project Review Committee
- Brief reports from the Industry-Wide Issues, Expansion, and Data Collection Subcommittees
- Prioritize new issues (members will receive a preview list for sequencing)

Mr. Goldsmith asked members to consider a future discussion about hosting workshops that would help the construction industry. Mr. Eng noted the suggestion is a work plan issue.

The Board referred to the previously deferred motion.

**Members voted on the previously deferred motion to forward PRC to the Expansion Subcommittee and that subcommittee chairs will develop a working group to begin working on the issues. Motion carried.**

Chair Lynch announced he would not be available to chair the April 12, 2007 meeting and is unsure whether Representative Haigh can chair the meeting. He reminded members that nominations for Chair and Vice Chair will likely occur in July 2007. The Board agreed for Mr. Eng to chair the April meeting.

Ms. Deakins noted the new statute will not be official when the Board appoints the PRC. The Board may have to take another vote to officially appoint members when the statute is confirmed.

**Adjournment**

Chair Lynch adjourned the meeting at 11:52 a.m.

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John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary  
Puget Sound Meeting Services