

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**Office Building 2
1115 Washington Street SE
Conference Room SL-03
Olympia, Washington
April 12, 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	House of Representatives
Ed Kommers	Specialty Contractor	Kristiansen	(R)
Dave Johnson	Construction Trades Labor	Senator Phil Rockefeller	Senate (D)
Carolyn Crowson	OMWBE	Vacant	Senate (R)
Larry Byers	Insurance/Surety Industry	Gerald "Butch" Reifert	Design Industry
Michael Mequet	Cities/Counties/Ports	Representative Kathy	House of Representatives
Dan Vaught	School District Project Rvw Bd	Haigh (Vice Chair)	(D)
Rocky Sharp	Specialty Contractor	John Lynch (Chair)	General Administration
Nora Huey	Cities/Counties/Ports	Rodney Eng	Cities/Counties/Ports
Olivia Yang	Higher Education		
Wendy Keller	Public Hospital Project Rvw Bd		

STAFF & GUESTS

Nancy Deakins, GA	Jim Anderson, Burton Construction
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Cheri Lindgren, Puget Sound Meeting Services	Larry Stevens, MCA/NECA
Dick Goldsmith, AWP/PHD	Tom Peterson, Hoffman Construction
Gary Baldasari, WA State Ferries	Rick Slunaker, AGC

Welcome & Introductions

Olivia Yang called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:05 a.m. A meeting quorum was attained.

Approve Agenda

Nora Huey moved, seconded by Daniel Absher, to amend the agenda and add an update on General Contractor/Construction Manager (GC/CM) training following subcommittee reports. Motion carried.

Approve March 8, 2007 Meeting Minutes

Daniel Absher moved, seconded by Ed Kommers, to accept the March 8, 2007 meeting minutes as presented. Motion carried.

Update on Bills

Ms. Deakins briefed members on Second Substitute House Bill (SSHB) 1506. The SSHB passed from the House to the Senate. She outlined changes by the Senate Committee of deleting sales tax from the total contract cost for GC/CM and Design Build (DB), exempting GC/CM projects advertised before July 1, 2007 from Sections 107 and 108 (project approval requirement), and adding new language stipulating a public body can request an exemption from the CPARB from any part of the act until December 31, 2007.

Ms. Yang asked whether a public body must restart a process if a contractor is selected and a signed contract is pending. Ms. Deakins replied the public body is required to request an exemption up to that point in the process. The selection is different. Any contract initiated under the old statute must comply with the new statute unless the public body requests an exemption from the CPARB.

Mr. Absher asked about the circumstance involving a preconstruction contract for a GC/CM selection where the final contract isn't signed until after July 1, 200. Ms. Huey said if an owner has a preconstruction contract, there is a contract.

Ms. Yang asked about the timing of the Maximum Allowable Construction Cost (MACC). Ms. Deakins replied an owner will use the statute as of July 1, 2007 and the 90% threshold. Ms. Huey said owners are likely to want to use the new statute.

Discussion ensued about existing language and the proposed statute that speaks to construction contracts and setting the MACC. Ms. Deakins said the proposed statute might stipulate that a contract signed before 2013 has to comply with the revised statute. Ms. Huey said the question is what constitutes a "contract."

Mr. Absher said if an owner knows there is a statute that prohibits setting the MACC until 90% and that it is set at 70% according to the previous statute, the contractor might have an argument to get out of the contract. It should be clear that the contract complies with the statute after July 1, 2007 or that an owner requests an exemption.

Ms. Huey commented that the few owners she's talked to are larger organizations that want to use the new statute.

Mr. Vaught arrived at 9:18 a.m.

Mr. Baldasari described the process Washington State Ferries uses for preconstruction contracts, negotiation of the MACC, and signing of a contract.

Ms Deakins stated Mr. Goldsmith mailed her a draft news release that could be used to notify owners about the new statute.

Discussion followed about how to publicize information about the new statute and applicability.

Ms. Deakins reported House Bill (HB) 2009; Trench Excavation, has not been voted on by the Senate and is in Rules. A note was forwarded to Senator Rockefeller and Representative Haigh requesting their assistance to move the bill out of Rules.

Substitute House Bill (SHB) 2010; Responsible Bidder, passed the House and Senate last week and will move forward to the Governor for signature.

Ms. Crowson reported the Small Works Roster Bill (1328) was revised several times. It passed the House and Senate, but is “watered down” at this point. The OMWBE may write a letter asking the Governor not to sign the bill because it’s not well written. There is interest to recommend a different concept and rework the language for the next session.

Ms. Deakins noted HB 1765; Changing provisions concerning limitation of claims under a construction contract (Mike M. Johnson case), died. The Board has time to work on the bill this year for the next session.

Brief Report from Subcommittees

Expansion – Olivia Yang

Ms. Yang reported the Expansion Subcommittee met on April 6, 2007 and worked on the issues list and discussed the Project Review Committee (PRC). Items #1 and #2 were referred to a task force chaired by Ms. Huey. Items #3, #4, #5, #9, #10, and #11 were referred to a task force chaired by Robynne Parkinson. Items #6 and #7 were referred to a task force chaired by Dick Lutz. It was agreed the task forces will meet on April 27, 2006. She encouraged members and stakeholders to attend and participate at the meetings. Ms. Huey said a meeting location has not been determined. Each task force meeting will take approximately two hours. She suggested one member contact the Northwest Carpenters Hall in Kent to schedule a block of time for April 27, 2007. Ms. Kelly said she will follow up with the Northwest Carpenters Hall.

Ms. Yang referred to the “Application for Certification of Public Body” and “Application to Use the GC/CM or DB Alternative Contracting Procedure” packets within the Expansion Subcommittee’s information. The subcommittee used the law as the framework and incorporated bullet points into the “Application for Certification of Public Body.” The subcommittee proposes page and size limits. The application materials used by the School District and Public Hospital Project Review Boards were influential in the development of the individual project approval packet.

Ms. Keller reviewed the proposed “Application to Use the GC/CM or DB Alternative Contracting Procedure.” She noted the application packet is limited to 20 pages. An applicant can attach six sketches. The intent is to create a single application for GC/CM or DB procurement methods. She described requirements #6 (Public Benefit), #7 (Public Body Qualifications), #8 (Public Body Construction History), and #9 (Preliminary Concepts, sketches or plans depicting the project). An instruction sheet and examples are also provided in the application packet. A set of tentative bylaws was drafted for the PRC.

Ms. Yang said if an application is approved, the applicant must meet data collection requirements, which is not optional.

Discussion followed about how to proceed. Ms. Keller proposed that the Board refine application language, bylaws and procedures and refer it to the organized committee. The PRC has something it can use that can be adjusted if necessary. The Board can then address the certification packet.

Ms. Huey asked for the Board’s consideration to forward rules and procedures previously identified by the Board to the PRC for its review and consideration.

Nora Huey moved, seconded by Ed Kommers, to forward to the PRC, a version of the “Application to Use the GC/CM or DB Alternative Contracting Procedure” packet and bylaws accompanied with the list of issues previously identified by the Board that the PRC will address when formed. Motion carried.

Boardmembers discussed “Application for Certification of Public Body.” Ms. Keller addressed two questions raised by Ms. Septelka:

- *Should an agency separately apply for each delivery method?* Ms. Keller’s response to Ms. Septelka was that an agency could apply to use both methods at the same time. The applicant is required to provide materials related to both.
- *Do poor audit findings relate to the agency or project audits?* Ms. Keller said the Board should resolve the issue. Agencies are audited for a number of things that don’t apply to certification. The Board should concentrate on what the agency did if it handled an alternative project that resulted in a negative audit and narrow the focus to project audits.

Ms. Yang suggested that to capture the spirit of the law, public bodies should be obligated to cite appropriate audit findings whether project specific or related to an office audit.

Ms. Keller said an owner is applying to use an Alternative Public Works (APW) method and an applicant is demonstrating the experience to gain certification. Audit findings should be related to the projects an applicant is citing for qualification. She said she doesn’t understand why audit findings would apply to other areas.

Ms. Yang said the University of Washington (UW) is unable to provide a project audit. UW could provide an office audit of selected GC/CM or DB projects. She said she understood that the applicant must demonstrate that they are a competent public owner, which is just as valid as a project audit. She said she supports both types of audits. The PRC would be well served with the information.

Ms. Huey explained how her agency is audited. An audit that touches on APW projects seems important.

Discussion ensued about determining what audit findings are appropriate to disclose. Mr. Kommers said he’s not sure he agrees the requirement applies only to APW projects. However, applying the requirement to any audit finding of an organization is too broad.

Mr. Absher said Senator Rockefeller’s intent was not to limit audit findings to alternative procurement projects. He believes other factors outside alternative procurement can be relevant to an owner’s qualifications and ability to manage an APW project. The audit findings should be related to an owner’s construction program and projects. Owners will not necessarily know what is appropriate or relevant. He suggested developing guidelines broader than just alternative procurement but not so broad an owner is submitting a lengthy audit document.

Ms. Keller added that including the private sector would help to balance the language. She volunteered to take the lead to develop alternative language.

Mr. Goldsmith suggested the application include text that speaks to projects completed within a timeframe and a threshold that captures the complexity of a DB or GC/CM project. Ms. Keller said she will follow up on refining the definition.

Mr. Goldsmith said the certification application does not offer sufficient direction or specificity to an applicant. The application should include precise information the Board and/or the PRC needs. He volunteered to work with someone that is familiar with benchmark standards. The request to describe the public body doesn’t add anything to the application.

Discussion ensued about forwarding the application to a work group that could also meet on April 27, 2007. The Board agreed to the following meeting schedule:

- 8:00 a.m. to 9:30 a.m., Project Review Committee (PRC)
- 9:30 a.m. to 11:00 a.m., Design Build Operation and Maintenance (DBOM)
- 11:00 a.m. to Noon, Job Order Contracting (JOC)
- 12:30 p.m. to 1:30 p.m., GC/CM and DB clean-up activities

Ms. Yang asked that Ms. Keller and Mr. Goldsmith provide the work product related to the application packets prior to the April 27, 2007 meeting.

Industry-Wide Issues – Nora Huey

Ms. Huey reported the Industry-Wide Subcommittee did not have a quorum. The subcommittee reviewed responsibility, an outreach strategy for individuals testifying against the proposal, and determining the documents to post on the internet. Mr. Purdy developed guidelines a number of years ago and authorized the subcommittee to use all or portions of the document to develop responsibility guidelines. The document was distributed during the meeting but not reviewed. Members reviewed the list of potential responsibility criteria revisions. The subcommittee believes safety is an important element. However, it's difficult to evaluate someone's safety record. More work by the subcommittee is necessary.

Mr. Johnson reported he would be unavailable to attend the April 27 meetings and asked if another date is available for the task force meetings. After discussion, the Board agreed to cancel the Expansion Subcommittee's meeting on May 4, 2007. The four groups will meet on Friday, May 4, 2007. It was noted that Mr. Lutz is unable to attend the meeting. Ms. Huey volunteered to attend the JOC Task Force meeting. Ms. Yang suggested talking about clean-up issues off line and revising the time from 12:30 p.m. to 1:30 p.m. to 12:30 p.m. to 1:00 p.m., followed by an Industry-Wide Subcommittee meeting from 1:00 p.m. to 3:00 p.m. Mr. Kommers said he will need to leave the Industry-Wide Subcommittee meeting by 2:00 p.m.

Mr. Johnson noted only five of the 17 Industry-Wide Subcommittee members were present at the April 6, 2007 meeting. He referred to the discussion draft for establishing specific evaluation criteria. There is a wealth of information available about responsibility criteria used by other states. Ms. Huey clarified that the subcommittee initially undertook a first draft exercise.

Ms. Deakins pointed out the intent of the edits is to move language to a section that talks about factors that should not be used because they are not easy to measure or are appropriate. Additional discussion is not necessarily needed. Mr. Johnson said the work should represent a broader perspective. Ms. Yang said a quorum was not present and no decision was made.

Ms. Yang recessed the meeting from 10:19 a.m. to 10:31 a.m.

Review Project Review Committee Applicants

Ms. Yang referred to the PRC applicants listing. The Board discussed how to proceed with evaluating and selecting candidates to serve on the PRC and whether to establish an interim committee. It was acknowledged that other applicants might submit letters of interest and/or resumes. Mr. Absher suggested identifying the number of members who would serve as the initial group to work through the issues until appointments are

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confirmed. Ms. Deakins clarified that even if the Board voted, another vote would be required after legislation creating the PRC passes. It is important to create a balance between private and public owners.

Mr. Johnson asked whether a deadline was established, as there are no applicants that represent labor. Ms. Deakins said the notice publicized April 5, 2007 as a deadline. The website indicates applications will be accepted until the positions are filled. Mr. Johnson said it's important to understand the committee mix.

The Board agreed to create a roster with categories and list the applicants that represent each area of interest.

At the request of Ms. Yang, Mr. Kommers reviewed the statute on the membership of the review panel. Ms. Yang said each time the PRC meets, six members should be present to afford a proper balance.

Discussion ensued about whether a representative from the School District Project Review Board (SDPRB) might submit an application. Mr. Vaught said he'd also like to see the SDPRB represented on the committee. Public owner representation is important. There was a prior discussion that the panel would consist of a public hospital or school district representative if projects related to the two groups were submitted to the PRC for review. Ms. Deakins referred members to section (d) of the statute.

Discussion followed about having an adequate pool of candidates so that the PRC could conduct two meetings concurrently if required. Ms. Keller suggested placing two main names under each of the categories followed by "ad hoc" members. All candidates would attend the GC/CM training.

Mr. Absher agreed with Ms. Keller's suggestion. However, more than two owners are needed. There might be a need for two candidates within the remaining categories. Except for the owner category, the remaining members are from the private sector. There should be a balance between public and private interests.

Mr. Anderson commented that only two people from eastern Washington are identified on the list of 34.

Ms. Crowson said there is only one MWBE company that has completed a GC/CM project. She said the contractor did not respond to her telephone calls.

Ms. Keller said not all representatives are required to have completed GC/CM projects. As long as the candidate is qualified and skilled in their area of expertise, the candidate can be taught how to review projects. Mr. Absher agreed but noted the statute dictates otherwise. Ms. Keller added that undertaking GC/CM training will provide the candidates with some experience. The Board could determine that attending the training and obtaining certification could qualify a candidate to serve on the PRC.

The Board agreed to add one MWBE representative from the office and a MWBE contractor to the roster. Members discussed candidate backgrounds and areas of expertise. The Board used the alphabetized candidate listing to create the following PRC pool:

Owner	AE	GC	Sub	CM	Labor	MWBE	Other
Paapke, PHPRB	Estvold	Peterson	Shinn	Chandler	Johnson	Huey-Ray	Beebe
Palewicz	Schreiber	Benson	Cameron*	Baldasari		Contractor	Molner
Septelka	Hartung	Balbo	Pease	Jurgensen*			
MacIssac, Ports		Cole					
Szumianski, GA							
School District							
Cities							

WSU, Pullman							
Trautman, King Co/Audit							
Smith, E., UW							
Bodell							
Jennings							
Koal							
Lebo							
Harkness							
Marberg							
Ralph							
Smith, W.							

*eastern Washington

Names in bolded text signify the Board’s preference. Other names represent candidates also available to serve on a panel.

The Board discussed the number of UW candidates that applied. Ms. Yang explained that Mr. Palewicz expressed interest in serving but is unsure he can attend ongoing monthly meetings. He asked that consideration be given to alternates that could attend in his absence.

Discussion ensued about candidates from eastern Washington. Mr. Absher said some special consideration should be given when candidates from eastern Washington apply.

Ms. Deakins reported that Mr. Anderson contacted her and inquired about applying. She indicated she indicated to Mr. Anderson that if he did not have DB or GC/CM experience, he probably should not apply.

Nora Huey moved, seconded by Carolyn Crowson, to consider individuals who are otherwise qualified to serve on the PRC even if they do not have direct GC/CM and DB experience and designate them to complete the four-day UW/AGC training session.

Mr. Peterson asked whether training is sufficient to qualify a candidate. Ms. Keller said the Board is looking at different disciplines. The training will provide candidates with the principles they need to consider. If the candidates are given the basics and are surrounded by others that are experienced, the candidates will learn quickly.

Mr. Asher indicated he has no issue appointing someone with Mr. Anderson’s experience. However, the motion is not necessary. The Board can review a candidate’s qualifications on a case-by-case basis and make a decision on qualifications. The motion could be construed as opposition to the legislation recently passed. Ms. Deakins pointed out that the statute states in part, “... who are knowledgeable in the use of...”

Mr. Anderson said he will discuss submitting an application for the Board’s consideration with his company.

The makers of the motion withdraw the motion.

Ms. Yang said the Board will have an opportunity to refine the listing at its May meeting.

Discussion ensued about informing applicants regarding their placement on a roster for serving on the PRC and notifying other candidates that they might be added at a later date.

Mr. Slunaker said the Northwest Chapter of the AGC is outreaching to the industry to recruit candidates. There might be more applications. One issue associated with notifying applicants who have been initially selected is whether the Board decides to add more names to the roster. Ms. Yang confirmed the Board is looking for more applicants to apply. The Board could designate the roster as a preliminary list at this time. The CPARB will consider new information in May and determine whether the list is a final list.

Mr. Slunaker commented that he doesn't see a balance on the PRC as there's a preponderance of public owners. Ms. Yang responded that the balance the Board is looking for is between public and private. Mr. Absher said there is room for several more private sector representatives.

Further discussion about balancing the PRC pool followed.

Ms. Yang said the distribution represented is not as relevant as the distribution represented on a review panel. The depth of the pool will assist in the equitable distribution of a review panel. The Board can add more names. She suggested retaining the list as drafted and not distributing the information at this time, which provides the CPARB with some flexibility to consider new information and finalize the list at the May meeting. The Board generally agreed to label the list a preliminary draft.

Mr. Absher suggested the Board should consider Mr. Bodell's name to determine if there is a tie to eastern Washington.

General Contractor/Construction Manager (GC/CM) Training Update

Ms. Yang reported the GC/CM training will span four days on May 16 and 17, and May 30 and 31, 2007.

May 16 and 17 will focus on the new legislation. The morning will be spent discussing the PRC and data collection requirements. In the afternoon, attendees will meet legislation drafters (Ms. Deakins, Mr. Kommers, Mr. Absher, and Mr. Eng) who will review the new statute. The May 17 meeting will include the same agenda but with more detail provided about the new law. She suggested recruiting as many attendees as possible for the first two days. The training is scheduled at Lynwood Convention Center.

May 30 and 31 meetings are "hands on" for project managers and engineers. The intent is to talk about typical GC/CM activities from an owner and contractor/subcontractor's perspective. The exercise will be a small group effort. Training sessions are scheduled to be held at the AGC office in South Lake Union.

Discussion ensued about distributing a training announcement. Ms. Yang reported a training flyer is under development. Another planning meeting is scheduled for Tuesday, April 17, 2007.

Members shared opinions on discounting the cost for those that are qualified and want to attend the training and the issue of reimbursement. Ms. Yang said the cost of the training is fixed. However a possible discount could be considered. The Board needs to determine whether to reimburse PRC members. It's a good idea for them to attend the first day, which will cost between \$50 and \$100. A certificate is issued if a candidate completes the four-day training. The cost for all four days is under \$400.

Mr. Absher said those serving on the PRC could discuss with UW and the AGC the possibility of waiving the fee.

Ms. Keller suggested mailing a training announcement to all candidates applying to serve on the review committee. The notice should contain language that potential PRC members should attend the training.

Ms. Deakins said it's a good idea for potential PRC members to attend the training; however, it should not be mandatory. Ms. Keller suggested encouraging candidates to attend the first day of training.

Ms. Yang confirmed she will mail a training announcement to the applicants indicating attendance is encouraged but not mandatory. A mandatory meeting should be scheduled once the PRC is appointed (June) to review bylaws and other topics.

Discussion ensued about the Industry-Wide issues list drafted in March and the issues addressed by the Expansion Subcommittee (items 1-13). Ms. Huey said the issues listed under "other" are outstanding and not sequenced. The subcommittee believed it had sufficient time to address the top six. Mr. Kommers indicated the outstanding issues can still be prioritized and added.

Begin Prioritizing Issues for Work Plan

The Board reviewed five bullet points that represent new issues since the March list was created:

- Open public bid openings
- Allow limited changes on existing projects
- Changes to RCW
- Increasing percentage for negotiating with low bidder
- Bid limits and day labor limits

Mr. Absher clarified that the first issue is related specifically to GC/CM bid openings. Mr. Kommers said the topic relates to item #3 on the CPARB issues list, GC/CM Contract Award, Section 303. There were no objections to consider the bid opening issue in conjunction with item #3.

Ms. Yang suggested identifying existing committees that can consider the new the issues.

Mr. Kommers said the other issues could be placed on the Industry-Wide issues list for sequencing and consideration. Mr. Absher agreed it makes sense to move the topics to the purview of the Industry-Wide Subcommittee.

Ms. Deakins provided additional details about the fourth bullet point, Increasing percentage for negotiating with low bidder. She noted there is no clear definition of the "Apprenticeship Utilization" and "Subcontractor Bid Listing Statute RCW 39.30.060" items listed under "Other industry-wide issues not prioritized by subcommittee." Mr. Johnson said he'd like to re-implement the old statute.

Set Next Meeting Agenda and Summer Meetings

A tentative agenda for the May 10, 2007 meeting was drafted with member input:

- Update on Bills
- Finalize Project Review Committee Procedures & Appointments
- Finalize Project Review Committee Project Applications, Owner Certifications, and Appointments

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- CPARB Appointments and Reappointments Briefing
- Brief Reports from Expansion and Industry-Wide Subcommittees
- Discuss Next Steps for Data Collection

Ms. Deakins reported the Governor will appoint most of the new Board members. Two current positions expire in July (Mr. Reifert and Mr. Kommers). She said she contacted the Governor's Office about how the appointments and reappointments will occur.

Members discussed whether the Board will need to meet all three months during the summer. Members agreed to retain the meeting schedule and cancel meetings as necessary. .

Adjournment

Mr. Absher moved, seconded by Mr. Johnson, to adjourn the meeting at 12:20 p.m. Motion carried.

Olivia Yang, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services