

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue. Hearing Room A
Olympia, Washington
May 10, 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	Representative Kathy	House of Representatives
John Lynch (Chair)	General Administration	Haigh (Vice Chair)	(D)
Michael Mequet	Cities/Counties/Ports	Wendy Keller	Public Hospital Project Rvw
Dan Vaught	School District Project Rvw Bd		Bd
Rocky Sharp	Specialty Contractor		
Nora Huey	Cities/Counties/Ports		
Olivia Yang	Higher Education		
Gerald "Butch" Reifert	Design Industry		
Rodney Eng	Cities/Counties/Ports		

STAFF & GUESTS

Nancy Deakins, GA	Juan Huey-Ray, OMWBE
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Cheri Lindgren, Puget Sound Meeting Services	Larry Stevens, MCA/NECA
Miriam Israel Moses, Rebound	Tom Peterson, Hoffman Construction
Gary Baldasari, WA State Ferries	Rick Slunaker, AGC
Larry Sheahan, AGO	Michael Transue, AGC
Susan Cruise, AGO	Julie Murray, WSAC

Welcome, Introductions, & General Contractor/Construction Manager (GC/CM) Training Update

Chair Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:07 a.m. A meeting quorum was attained. Everyone present provided self-introductions.

Chair Lynch announced the retirement of Carolyn Crowson from the OMWBE. Ms. Crowson advised that she notified the Governor's Office and recommends having Juan Huey-Ray fill her position on the Board until a new appointment is confirmed.

Chair Lynch reported the first two days of the GC/CM training is scheduled for May 16 and 17, 2007.

Ms. Deakins noted that Mr. Mequet and Ms. Huey are voting on behalf of Cities/Counties/Ports.

Approve Agenda

The following changes were requested to the agenda:

- Ms. Yang's name is missing in the "Member" column.
- The Board is approving the April 12, 2007 minutes rather than the March 8, 2007 minutes.
- Add reports from the Expansion and Industry-Wide Issues Subcommittees.

Dave Johnson moved, seconded by Ed Kommers, to approve the May 10, 2007 agenda as amended. Motion carried.

Approve April 12, 2007 Meeting Minutes

Dave Johnson moved, seconded by Rocky Sharp, to approve the April 12, 2007 meeting minutes as presented. Motion carried.

Update on Bills

Ms. Deakins briefed the Board on the status of the following bills:

- House Bill (HB) 2010 (Responsibility) was signed by the Governor.
- The Governor's Office anticipates the Governor will sign HB 1506 on May 14 or May 15, 2007. Staff will notify Boardmembers when the bill is scheduled for signature so members can attend.
- HB 2009 was a small bill and got lost in the shuffle.
- HB 1328 (amending the Small Works Roster) was signed.

Rick Slunaker commented that HB 2009 should be placed high on the Board's 2008 legislative agenda or included with other changes so that it is not overlooked.

Brief Reports from Subcommittees

Expansion - Project Review Committee Task Force – Olivia Yang

Ms. Yang reported the "Application for Project Approval" is similar to what was presented and discussed at the last meeting. The task force discussed the "Application for Certification of Public Body." A small group of the task force refined the document. The purpose of the certification of the public body is that the owner must demonstrate competency in Alternative Public Works (APW) delivery methods. She referred to item 8 on page 2 of the certification application requesting the owner demonstrate success in managing at least one project using the contacting procedure within the last five years.

Chair Lynch suggested reviewing the timeline for when the Project Review Committee (PRC) will become functional, availability of applications, and when the PRC could expect to receive applications. Ms. Yang explained the task force anticipates the CPARB to appoint PRC members during the meeting. The PRC will meet up to two times prior to July 1, 2007 to discuss operating procedures/bylaws and how to interpret whether a project meets APW criteria. The intent is for the PRC to be ready to meet July 1, 2007 to review project applications with certification of public bodies beginning in August. Appointing the members during the Board's meeting gives the PRC the remainder of May and all of June to work on procedures and to function as a body by July 1, 2007. The CPARB should make strategic and/or policy decisions. The PRC should be allowed to work out the details concerning the operating procedures/bylaws based on the Board's policies. The PRC might also have recommendations about refining the applications.

Mr. Absher emphasized that the task force has moved forward in drafting the applications. The PRC should take the lead from this point forward and determine the details.

Discussion ensued about whether the CPARB would play a role in approving and/or reviewing the PRC bylaws or operating procedures. Mr. Vaught responded that any changes to the application templates or bylaws will come back to the CPARB for informational purposes, but not necessarily for approval.

Ms. Huey conveyed that King County has concerns that the PRC has appropriate operating procedures and a review mechanism should problems emerge.

Mr. Eng said the CPARB is a policy body and the PRC is responsible for day-to-day activities. The PRC should not be totally independent from the Board. He said he wants to ensure the PRC is following the regulations set forth in statute. The CPARB should review the bylaws and confirm the intent about how the PRC moves forward. Mr. Johnson echoed similar comments and indicated he expects the PRC Chair to report to the CPARB on a regular basis.

Chair Lynch agreed the PRC is a subcommittee to CPARB and not an autonomous, separate group. However, the PRC needs to be sufficiently independent to manage its affairs.

Ms. Yang reported a monthly report from the committee chair or vice chair might be appropriate to keep CPARB apprised of project review activities.

Discussion followed about incorporating language in the bylaws that the subcommittee chair or vice chair provides the CPARB with monthly reports about PRC activities and that any policy changes would be approved by the CPARB.

Members discussed how the CPARB communicates policy direction to the PRC. Mr. Absher indicated the statute outlines policy direction for the committee. The Board should let the committee know it expects monthly reporting. The committee can forward a draft copy of its bylaws and/or operating procedures to the CPARB.

Mr. Eng said it's appropriate for the CPARB to approve the committee's bylaws. The bylaws outline how the Board expects the committee to operate.

Discussion followed about approving the bylaws prior to the committee's first meeting. Boardmembers discussed appointing a Boardmember to serve as a liaison to the PRC to help ensure an orderly transition, and/or the PRC chair could attend CPARB meetings to gain a perspective about the process.

Ms. Deakins noted the CPARB currently does not have the authority to create the PRC. The committee structure is not effective until the bill is signed.

Mr. Eng suggested the Board could ratify PRC appointments at the June meeting.

Ed Kommers moved, seconded by Nora Huey, to create the PRC pending the Governor's signature of the legislation and in accordance with Section 104, provide the committee with the draft application packages (certification and projects) and draft bylaws, direct the PRC to convene in July 2007, elect officers, approve the bylaws and applications packages in the amended form, and forward the final documents to the CPARB for ratification at the next practical meeting, as well as having officers or representatives attend CPARB meetings on a monthly basis.

Chair Lynch said the PRC is convening in July to conduct business. He offered a friendly amendment, that the PRC meet in advance of the July meeting to finalize the bylaws for the CPARB's approval in June 2007.

Mr. Johnson suggested a friendly amendment for the agreement to include having PRC officers or representatives attend CPARB monthly meetings for the purpose of providing a report on PRC activities.

Ms. Huey expressed support for having several CPARB members attend the first several meetings of the PRC to answer questions.

Ms. Deakins suggested the Board could add a requirement to the bylaws for PRC officers or representatives to attend monthly CPARB meetings.

The makers of the motion accepted the friendly amendments.

Motion as amended carried unanimously.

Finalize Project Review Committee Procedures and Appointments

Mr. Johnson commented that he hasn't received any responses from the labor category and asked that the Board hold the positions open.

Ms. Deakins reviewed applicants new to the list since the Board's last meeting to include Jim Anderson, Gary Arndt, Paul Berry, Gregory Bogard, Gary Laasko, Philip Lovell, John Mannix, and Peg Staeheli. The eight candidates proposed by the University of Washington (UW) were reduced to two; Dave Marberg and Eric Smith. Dan Bodell withdrew his application.

Ms. Deakins presented the panel matrix and described the process Boardmembers used at the April meeting to create the PRC pool. The PRC Chair will select individual panels of six for each review team.

Members discussed new candidate backgrounds and areas of expertise. The Board used the updated alphabetized candidate listing to create a revised PRC pool:

Owner	AE	GC	Sub	CM	Labor	MWBE	Other
Paapke	Arndt	Peterson	Shinn	Chandler	Placeholder	Anderson*	Beebe
Marberg	Schreiber	Benson	Cameron*	Baldasari	Placeholder	Placeholder	Molner
Septelka	Hartung	Balbo	Pease	Berry			
MacIssac	Staeheli	Lovell					
Koal		Cole					
Mannix*							
Trautman							
Smith, E.							
Placeholder							
(Higher Ed							
other than							
UW							
Placeholder							
(Cities)							
Jennings							
Lebo							
Harkness							
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.

Ms. Deakins noted that both Chandler and Jurgensen are from the same company. Mr. Kommers recommended not having two representatives from the same firm on the PRC. The Board concurred to replace Jurgensen with Berry in the CM category.

Discussion ensued about placeholder spots for Cities, MWBE, and Labor. The Board will ultimately approve candidates to fill the positions.

Boardmembers considered Arndt and Staeheli to fill AE positions. Mr. Absher suggested replacing Estvold with Arndt or Staeheli. Mr. Reifert indicated his preference for Arndt is based on the candidate's background and experience. There were no objections.

Members discussed the two candidates from UW (reduced from eight) and adding a placeholder for higher education (other than UW) to the owner category.

Chair Lynch recessed the meeting from 10:27 a.m. to 10:47 a.m.

Continue Finalizing Project Review Committee Procedures and Appointments

Chair Lynch reported Mr. Mequet left the meeting during the break and that Mr. Eng and Ms. Huey will vote for Cities/Counties/Ports.

Discussion ensued about the diversity of the candidates selected.

Chair Lynch noted Koal with General Administration (GA) has recent GC/CM experience and is knowledgeable about the contracts. GA would have no objections to replacing Szumlanski with Koal. There were no objections from Boardmembers about making the change.

The Board discussed adding Staeheli to the AE category, efforts to keep the PRC at a size to effectively interact rather than continuing to expand the pool number, and the purpose of the "Other" category and experiences represented by Beebe and Molner. CPARB agreed to include Staeheli in bolded text in the AE category.

Ms. Moses commented that there appears to be a lack of balance and diversity within the PRC panel.

Mr. Vaught said the School District Project Review Board (SDPRB) intends to recruit a candidate from western Washington in the event Mannix is unable to attend a meeting. He said he will likely provide another name for the Board's consideration at the next meeting.

Ms. Crowson commented about problems where boards have evolved and people begin to believe they "own" the positions. PRC positions should be individually focused. The Board should continue to balance the committee.

Chair Lynch said if Mannix is not available to attend a meeting, the PRC Chair will consider another member from the pool.

Dave Johnson moved, seconded by Rocky Sharp, to approve the PRC pool listing.

Mr. Eng clarified that the intent of the motion is to approve the specific individuals identified on the list and identifying spots the Board intends to fill to create the appropriate balance.

Mr. Byers commented that the "Other" category provides a broader composition to the PRC.

Mr. Eng said the list establishes the initial PRC. The Board can add or subtract as necessary and is not locked into the seven categories.

Mr. Kommers reported the initial PRC term is three years. There will be a need to overlap terms. The chair or subcommittee could work out the details. The Board should clarify the terms.

Mr. Kommers offered a friendly amendment stating, "The Board shall stagger the appointment of the committee member with Chair Lynch appointing a subcommittee to determine staggering." The makers of the motion agreed to the friendly amendment.

Motion as amended carried unanimously.

Discussion ensued about the next steps. Boardmembers indicated a preference to send a letter to the candidates appointed to the PRC as soon as possible. The letter could include language that the Board is determining the staggering of appointments. The letter should contain a materials packet (bylaws and project and certification applications). Ms. Deakins noted some of the applicants have indicated a preference for one, two, and/or three-year terms.

The CPARB reviewed a draft PRC operating bylaws document. Chair Lynch said GA has the ability to reimburse committee members for travel expenses. GA submitted a fiscal note for HB 1506; however, no money was appropriated. GA is requesting additional funds during the supplemental session.

Chair Lynch said he and Ms. Deakins will determine the staggering of appointments later in the day. There were no objections.

Discussion followed about specifying a meeting date in the appointment letters. The first PRC meeting should take place prior to CPARB's June 14, 2007 meeting. Boardmembers identified June 7, 2007 as the first PRC meeting date. Ms. Yang and Mr. Absher will coordinate a meeting time and location (most likely the Seattle area).

Ms. Moses asked if the letter will be sent out as a draft. Chair Lynch confirmed that it will be a draft.

Ms. Deakins said the Board wants to add language that the PRC chair reports to the CPARB on the committee's progress and issues. Ms. Yang suggested providing Board feedback about the bylaws to the PRC for discussion at its first meeting.

Mr. Peterson said the PRC should have an opportunity to become familiar with the bylaws prior to the meeting. He offered a suggestion of staff posting the bylaws on the website or including the draft document with the appointment letter. A main focus of the PRC's June meeting should be adoption of the operating bylaws.

Mr. Absher suggested the letter should include information about the upcoming GC/CM training.

Brief Reports from Subcommittees, Continued

Expansion Subcommittee – Olivia Yang

Ms Yang reported on a series of Expansion Subcommittee task force meetings:

- **Job Order Contracting (JOC).** The task force will revisit whether to allow new public bodies. Related to the 80% subcontract, the agreement was a 90% threshold with the understanding that owners or JOC contractors would be allowed to work with 80% if a good faith effort was made to meet 90% but was unsuccessful. Concerning specialty JOCs, the Mechanical Contractors Association (MCA) will work with labor.
- **Design Build (DB).** A question was whether or not to allow DB projects under \$10 million. There was consensus that a limited type and number of projects go before the PRC. Some agreement is possible if the limit is under \$10 million and no less than \$2 million.
- **Design Build Operate and Maintain (DBOM).** A concern is asking for solicitation from a pool of bidders that is very small. There are groups excluded from bidding on a DBOM project that are eligible to bid on DB projects. Mr. Kommers and Mr. Smith (UW) are working on a revision to present to the subcommittee next month.

Ms. Yang briefed the Board on some clean-up issues.

Industry-Wide Issues Subcommittee – Nora Huey

Ms. Huey reported the Industry-Wide Subcommittee evaluated and is determining the items the subcommittee believes it can tackle this year for the 2008 legislative session. The subcommittee may decide to select items at the next meeting. Some topics didn't make the Board's 2007 agenda. The subjects are still on the list for consideration for future years. Some members indicated they might want to pursue legislation outside of CPARB. A concern is that members are not prevented from pursuing changes to the law outside of the Board's process.

The subcommittee discussed the notice provision (Mike M. Johnson) at length. Associated General Contractors (AGC) is concerned that other parties and/or entities, in addition to CPARB, should be engaged. At the subcommittee meeting, Ms. Murray noted that Judiciary Committee members are not familiar with the CPARB. Ms. Murray suggested that the CPARB as a whole, approach legislators to discuss the notice provision and the Board's involvement. Ms. Huey said owners believe the CPARB should be involved. AGC representatives and legislators expressed concerns about the CPARB addressing the issue and the need to include stakeholders who are not members of the Board.

Ms. Huey briefed the Board on the status of responsibility guidelines, general contractor liability for prevailing wages/defaulting subcontractors, in-state preferential bidding, clean-up of current laws (retainage, prompt pay), and unsupported claims (contractors submitting overstated and unsupported claims).

The subcommittee evaluated new agenda items and reconsideration of issues considered and not prioritized:

- Apprenticeship utilization, subcontractor listing statute, bid limits and day labor were not slated for the 2007 agenda.
- A task force was established to look at the "clarify the \$1 million threshold" issue. Mr. Probart will chair the task force.
- Reject all bids was withdrawn from consideration.

- Owners would like the ability to add out of scope work to existing projects. It is an efficient way to deal with smaller projects that come up on campuses. The subcommittee passed a motion that the CPARB should inform owners that they cannot make out of scope changes to existing projects.
- Owners proposed increasing the opportunity to negotiate with the low bidder when all bids are over the Maximum Allowable Construction Cost (MACC). The subcommittee voted to include the issue as a 2007 agenda item. A task force has been established. Mr. Hoffman will chair the task force.
- Subcommittee members voted to include paying undisputed amounts of claim as a 2007 agenda item. A task force has been established. Mr. Slunacker will chair the task force.

Ms. Yang suggested pairing up the \$1 million threshold issue with the trench excavation proposal.

Discussion ensued about concerns related to tying other legislation to the \$1 million threshold issue and concerns about dealing with the Mike M. Johnson topic.

Mr. Kommers said he sees no reason for why a task force shouldn't work on the Mike M. Johnson issue.

Ms. Huey indicated it will also be helpful for Boardmembers to talk to legislators on the Judiciary Committee about the CPARB's functions and responsibilities. The Board should also decide how it will handle issues it might not have time to address that other parties might want to pursue.

Chair Lynch said the Board should continue to consider bills as they emerge and provide feedback to the Legislature.

Mr. Johnson said one problem is a political party using the Board to kill a piece of legislation that someone decides to pursue when the CPARB is not ready to address a particular issue.

Mr. Eng commented that as a group, the CPARB can rise above constituent interests when appropriate and provide an opinion when requested.

Mr. Absher added that the CPARB cannot act as a gatekeeper. It is inherent that there are individuals who could use the Board to promote or kill a bill. If there's a piece of legislation a party wants to advance, the party should bring it to the CPARB for discussion and consideration in advance of the session rather than dealing with it in the middle of session.

Chair Lynch asked members to consider the issue. CPARB should render an opinion about a bill when asked.

Board Appointments and Transition Project Exceptions

Ms. Deakins reported two member positions (Mr. Reifert and Mr. Kommers) expire in July. Mr. Reifert and Mr. Kommers were asked to send a letter stating why they want to be reappointed, along with a resume to Kim Tanaka's attention at the Governor's Office if they wish to seek reappointment. She noted Boardmembers remain members until they're replaced.

Ms. Deakins reported the following positions were added to the CPARB resulting in a 23-member Board representing general contractor, architecture profession (previously Design Industry), engineering profession, construction trades labor, and two from private industry.

Discussion ensued about needing to change procedures, about what constitutes a quorum, and that it's appropriate for the CPARB to solicit candidates to apply for vacancies on the Board.

Chair Lynch summarized the transition and project exceptions process. If an owner authorized to use APW delivery methods advertises a project before July 1, 2007, the PRC process is not required for the project. However, depending on the status of the project after July 1, 2007, the owner is required to follow the new law.

Larry Sheahan, Attorney General's Office (AGO), explained there is some ambiguity in Bill 1506. The issue concerns projects that have been advertised but no contract is signed before July 1, 2007. The matter was not addressed when the bill passed the House. The Senate Committee placed an amendment on the bill that gives the Board the authority to exempt provisions of the new law for projects advertised prior to July 1, 2007 and not signed until after July 1, 2007. The ambiguity is that language should have been placed in Section 503 but was incorporated in Section 502. Section 502 deals only with the SDPRB and the Public Hospital Project Review Board (PHPRB). The question is whether the exemption applies only to the SDPRB and PHPRB or to all owners. The legislative intent from the bill reports suggests that the exception applies to all public owners. Mr. Sheahan suggested that the Board consider criteria related to exempting projects at the June meeting, such as, the CPARB limiting its own ability to exempt projects. The statute states in part, "The Board may grant an exemption from any provision of this act for projects advertised before the effective date of this section." The CPARB could be in a difficult position where owners request exemptions for a number of items.

Discussion ensued that the number of projects that could be affected is probably low and that owners might be tempted to advertise several projects prior to July 1, 2007. The Board should identify and discuss exemption criteria at the June meeting (including proven hardship). Some owners could seek exemption from the selection while planning to use the new law. Boardmembers discussed setting the MACC. Chair Lynch noted the effective date of the law is July 1, 2007 regardless of when the Governor signs the bill. Concerning JOC, on July 1, 2007, an owner could change order an existing JOC and initiate the higher limits allowed by law.

Set Next Meeting Agenda

Chair Lynch asked members to e-mail additional agenda topics for the June meeting to staff as soon as possible. He reported he is unable to attend the June meeting. A volunteer is needed to chair the meeting.

Adjournment

With no further business, Chair Lynch adjourned the meeting at 12:15 p.m.

John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services