

**CAPITAL PROJECTS ADVISORY REVIEW BOARD**

**John L. O'Brien Building  
504 15<sup>th</sup> Avenue. Hearing Room A  
Olympia, Washington  
June 14, 2007  
9:00 AM**

**Final Minutes**

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<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	House of Representatives
Ed Kommers	Specialty Contractor	Kristiansen	(R)
Olivia Yang	Higher Education	Senator Phil Rockefeller	Senate (D)
Clarence Gillis	OMWBE	Vacant	Senate (R)
Representative Kathy	House of Representatives (D)	Dave Johnson	Construction Trades Labor
Haigh (Vice Chair)		Larry Byers	Insurance/Surety Industry
Dick Goldsmith	Public Hospital Project Rvw Bd	Daniel Vaught	School District Project Rvw
Bob Maruska	Cities/Counties/Ports		Bd
Rocky Sharp	Specialty Contractor	John Lynch (Chair)	General Administration
Rodney Eng	Cities/Counties/Ports	Nora Huey	Cities/Counties/Ports
Peter Antolin		Gerald "Butch" Reifert	Design Industry

**STAFF & GUESTS**

Nancy Deakins, GA	Karen Barrett, JLARC
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Cheri Lindgren, Puget Sound Meeting Services	Pam Johnson, OST
Miriam Israel Moses, Rebound	Darlene Septelka, King County
Roland Orr, GA	Rick Slunaker, AGC
Larry Sheahan, AGO	Dan Nelson, Perkins+Will
Rodger Benson, MA Mortenson, PRC Chair	Stan Bowman, AIA WA Council
Daniel Galvin, AGO	Marsha Reilly, House
Mac Nicholson, Senate	

**Welcome & Introductions**

Olivia Yang called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:10 a.m. A meeting quorum was not attained. Everyone present provided self-introductions.

Ms. Yang reported the General Contractor/Construction Manager (GC/CM) training conducted in May was very successful. She thanked members and others in the audience who participated. There is interest for a repeat session. Ms. Deakins said 150 people attended the training.

**Approve Agenda**

Ms. Yang reported the subcommittees did not meet. The Project Review Committee (PRC) status agenda topic will include a report from Chair Rodger Benson.

*Daniel Absher arrived at 9:14 a.m. A meeting quorum was attained.*

Ms. Deakins noted voting members during the meeting include Ms. Yang, Mr. Kommers, Mr. Maruska, Mr. Eng, Mr. Sharp, and Mr. Absher.

**Rodney Eng moved, seconded by Rocky Sharp, to accept the agenda. Motion carried.**

**Approve May 10, 2007 Meeting Minutes**

**Rodney Eng moved, seconded by Daniel Absher, to approve the May 10, 2007 minutes as presented. Motion carried.**

**Brief Reports from Subcommittees**

***Expansion – Olivia Yang***

Ms. Yang reported the Expansion and Industry-Wide Subcommittees did not meet. Primary stakeholders were asked to circulate proposed legislation to others. Mr. Lutz is working on the Job Order Contracting (JOC) issue. She said she distributed an e-mail from the cities and counties about Design Build (DB) under \$5 million. Mr. Kommers is working on Design Build Operate and Maintain (DBOM) and will have information to present to the Board in September.

Ms. Moses reported Industry-Wide task forces did meet. Materials are ready to distribute to the subcommittee at the next meeting.

Ms. Deakins noted both subcommittees have cancelled their July meetings.

**Data Collection Update**

Ms. Septelka distributed two handouts to Boardmembers: Survey Issues and draft Team and Subcontractor Surveys. She described some issues discovered following initiation of the pilot program last fall:

- Data were not secure – anyone can access and edit data.
- Data entry was questioned and follow up telephone calls were necessary.
- Many respondents experienced problems with the design phase concepts of the survey.
  - Several people reported they did not join the project team until after the design elements were completed.
  - Others provided elaborate narrations on how a definite answer would be impossible because of multiple changes in the project schedule.
  - Security lock-downs following the 9/11 events. Contacts from the Port of Seattle said many of their dates appears out of place due to halting construction as a direct result of post 9/11 security enforcement.
- Projects that contain multiple phases are often overlooked and grouped into a single project. If clean up of a pre-existing building is required prior to construction, it's difficult to determine the actual construction start date.
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Recommended improvements include:

- Control data (password protected).
- Easier process of paging through survey when changing data and a prompt asking for verification of data entered.
- Develop a survey guide with instructions.
- New data entry needs to be reviewed quarterly with possible telephone follow up.

- Yearly analysis and report to the CPARB.

Ms. Septelka referred to the survey documents. Additional questions were incorporated based on project management laws. The owner, architect/engineer, construction management consultant, and prime contractor would complete the *Team Evaluation Survey*. An abbreviated *Subcontractor Survey* was also developed. She requested that the Board review the surveys and take action about whether the surveys are required following completion of a contract. General Administration (GA) can include the surveys on the web.

Mr. Eng referred to the *Subcontractor Survey* and suggested deleting Section 5.0, Prime Contractor Selection Process.

Representative Haigh suggested contacting the Public Disclosure Commission for information about the agency's experience with online surveys and data collection.

Discussion ensued about password protection. Ms. Septelka said a password could be issued to an agency or a project. Several members commented that an agency password would be preferable.

Discussion followed about next steps and whether there is adequate funding and staff to support data collection. Ms. Deakins said she will review the budget and follow up. She reminded members that the fiscal note request included in new legislation is not funded. GA plans to submit a supplemental budget request. There is approximately \$50,000 in the carryover budget for data collection. GA staff has not discussed with Information Technology (IT) staff the costs to incorporate revisions to the surveys.

Ms. Yang asked about the responsibility for drafting a survey guide. Ms. Septelka said she will follow up with GA staff. She said she believes GA staff will review and verify collected data.

Mr. Slunaker asked when the public will have access to the information. Ms. Septelka said it was determined earlier that there would be no report on the pilot project. She recommended cleaning up the database, initiate data collection immediately, and verifying data collected over the next year by July 1, 2008 followed with a report to the CPARB in September 2008. The data could be released to the public after CPARB has approved the report.

**Ed Kommers moved, seconded by Rodney Eng, to move data collection from a pilot status to operational, approve the Data Collection Subcommittee recommendations outlined in the handout, accept the evaluation surveys as amended with CPARB receiving annual reports in September. Motion carried.**

Mr. Kommers requested the Data Collection Subcommittee draft an outline defining the elements for the survey guide. The Board will delegate follow up tasks accordingly.

Ms. Septelka reported the surveys apply to GC/CM and Design Build (DB) projects only. Another issue is how to collect information to benchmark against Design Bid Build (DBB). During the pilot project, select owners agreed to provide DBB project information. There is a gap in the comparison to DBB during data collection.

Mr. Lutz said new legislation suggests collecting information on JOC. He asked about the responsible entity for collecting JOC information. Mr. Lutz said it's important for the owner and JOC contractor to understand that they are required to track subcontractors used for projects.

Mr. Slunaker suggested having GA prepare a specific budget for the Legislature to fund data collection activities. Ms. Deakins replied GA is developing a budget.

Mr. Absher asked that the September CPARB meeting agenda include a report from GA on funding needs.

Ms. Septelka said the cost for collection of JOC data is an unknown until the survey is created.

Dialogue ensued about the survey elements for JOC projects. Mr. Kommers noted Section 405 outlines the reporting requirements. CPARB needs to discuss a strategy on how to collect JOC data.

Ms. Yang said the University of Washington (UW) could work with GA, Centennial Construction, and Burton Construction to develop a draft JOC survey. There were no objections from the Board.

Mr. Eng reported the CPARB is subject to the Public Disclosure Act (PDA). He suggested emphasizing a policy designating all reports as a draft until approved by the Board. He noted the CPARB is not preventing the release of information.

#### **Project Review Committee Status**

Ms. Yang introduced Rodger Benson, Chair, Project Review Committee (PRC). Mr. Benson reported the PRC met on June 7, 2007 with 25 members in attendance. There are currently three vacant positions. Eric Smith was elected as Vice Chair. The committee reviewed, modified, and approved operating bylaws. He reviewed key decisions rendered during the meeting:

- Chair and Vice Chair positions should be filled by public and private representatives.
- The committee will meet on the fourth Thursday monthly through the end of the year. Application review meetings will be held on the same day as the committee meeting with concurrent reviews as necessary. Regular meetings will be held in the mornings with application reviews scheduled in the afternoons.
- For now, all PRC members will participate in the public agency certification approval process. It provides an opportunity for all committee members to gain experience with the review and approval process prior to serving on a project review panel.
- The panel size for project review will consist of eight members appointed by the Chair and Vice Chair. A minimum of six members is required for a quorum. A supermajority vote is required for all panels to approve an application. Panels will be led by the Chair, Vice Chair, or a designated lead appointed by the Chair.

Ms. Yang asked if the PRC defined a supermajority. Mr. Benson replied a supermajority is two-thirds of members present at a meeting.

Mr. Kommers asked about the logic for requiring a supermajority rather than a simple majority. Mr. Benson explained the committee debated the issue. It should be perfectly clear which projects and which owners are appropriately using Alternative Public Works (APW) processes. The committee perceived for example, that a 51/49 vote would not represent a solid decision.

Mr. Eng said the subcommittees did not contemplate or discuss a requirement for a supermajority vote. If they had, the subcommittees would have incorporated relevant provisions within the legislation. Owners expressed concern about the PRC process. Requiring a supermajority vote could potentially render the process burdensome and difficult. The law does not refer to a supermajority vote. A majority vote is likely more appropriate.

Ms. Yang and Ms. Deakins explained that a quorum (19) is required to review applications. Fourteen votes are required to approve an application. Mr. Benson commented that none of the owners raised an issue about the voting requirements at the meeting. Mr. Eng questioned whether the PRC can set a higher voting requirement than authorized by statute. Ms. Deakins reported she discussed the bylaws with GA's Assistant Attorney General (AG), specifically about the committee's ability to set quorums and similar matters. The AG indicated the PRC has the ability to define its operating procedures.

Mr. Kommers asked whether the bylaws include a separate section addressing quorum and voting requirements for certification of public owners. Members concluded that the answer is no. Mr. Kommers said taking action on certifications is an important matter. It's important a quorum is attained and that requiring a supermajority vote is an idea. However, an owner can appeal a decision to the Board. Requiring a supermajority vote appears excessive.

Mr. Absher stated the bylaws are well written. A supermajority vote is appropriate. He said he didn't recall an instance when an action taken by the Board resulted in a split vote. Requiring a supermajority vote gives the public confidence that a certified owner meets a higher standard.

Ms. Septelka reported some members believe it's important that all PRC members support moving a project forward. The matter was debated at length. The committee agreed a supermajority vote was a compromise.

Mr. Benson said there is nothing that precludes an owner from coming back to the PRC with a revised proposal addressing concerns raised by the committee.

Ms. Deakins noted there is an opportunity to ask the applicant questions about a project prior to presentation to the PRC.

Mr. Benson reported the committee reviewed the project approval information sheet. Some cosmetic changes were made including adjustments to the sample attachments and clarifying submittal requirements. A more significant change includes establishing a review cycle. Electronic and mailed applications are due by 4:00 p.m. on the first business day of each month for consideration at the next PRC meeting. There were no modifications made to the certification packet.

Mr. Benson reported a public notice was published announcing the new law requiring approval of special types of public construction projects and providing notice of a July 2, 2007 application deadline for the July 26, 2007 PRC meeting. Ms. Deakins added that a press release was also sent to the news media. Mr. Benson said the Board's website has been updated with the current project and certification approval information packets. Next steps include CPARB approving the committee's operating bylaws, scheduling committee training, identifying a meeting place for the long-term, and standardizing internal and external communications.

Discussion followed about whether the PRC entertained the idea of assembling concurrent review panels at different locations.

Mr. Benson reported the PRC is ready to accept applications on July 2, 2007 for review at its July 26, 2007 meeting.

Discussion ensued about whether the PRC considers applications not received by the deadline. Mr. Benson said the committee could review a late application but would not be obligated to do so. Ms. Deakins said the PRC Chair could consult with the Vice Chair to decide if scheduling another meeting is necessary.

Members discussed the issue and agreed that the project approval and certification of public body application packets should clarify that submittal of an electronic application by 4:00 p.m. on the first business day of the month triggers a complete application.

**Ed Kommers moved, seconded by Rocky Sharp, to endorse Chair (Rodger Benson) and Vice Chair (Eric Smith) appointments to the PRC. Motion carried.**

Mr. Kommers said the Board is required to ratify PRC bylaws. The Board expects the committee to refine the application forms and due dates over the next several months. He suggested deferring the majority/supermajority issue and asked whether the committee is proposing to amend Article 4 to reflect that a quorum (19) is required to review and approve certification applications and that 14 votes are required to approve an application. Mr. Benson affirmed that is the request.

Mr. Maruska asked if the amendment includes ethics and conflict of interest exclusions. Ms. Deakins replied the issue was discussed but is not reflected in the bylaws.

Discussion followed about additional challenges requiring the officer's attention, such as appointing panels representing both public and private sector interests and appointing members to panels who have relevant experience related to the delivery method proposed. Mr. Benson said the committee recognizes other changes are likely and will be presented to the Board for discussion and action.

Mr. Eng said he doesn't want Article 4 language preventing all committee members from attending a hearing and voting on an action. Mr. Benson replied that the intent is for all members to attend and participate at certification meetings. The officers are committed to ensuring members are properly prepared to function when called upon. There is no provision in the bylaws limiting the number of members who serve on the early panels.

Mr. Kommers suggested the first sentence of item B on page 3 of the bylaws should read in part, "Shall designate a minimum of 8 members for each panel..." There were no objections.

**Ed Kommers moved, seconded by Daniel Absher, to approve the bylaws as presented by the PRC with an amendment that defines the requirements for the full panel to consider public body certification. Motion carried (3-2). Mr. Eng and Mr. Maruska opposed.**

Ms. Yang said another item requiring Board action is completing the PRC roster. Higher education proposes appointing Rick Benner to fill the respective vacancy.

**Ed Kommers moved, seconded by Rodney Eng, to accept the nomination of Rick Benner to the PRC.**

Ms. Deakins noted staff has not received Mr. Benner's application.

**Motion carried unanimously.**

Mr. Eng reported on his request to the Association of Washington Cities (AWC) to recommend a candidate from a different city (not Seattle) for the "Cities" vacancy. No one has stepped forward. Seattle is prepared to nominate another representative if necessary. Mr. Kommers said he agrees with the approach of having AWC recommend a candidate from a different city. Ms. Deakins noted staff has not received information from Construction Trades Labor or the Office of Minority & Women's Business Enterprises (OMWBE) for candidates to fill vacant positions. Ms. Yang suggested scheduling the matter for the July agenda for further discussion.

**Rodney Eng moved, seconded by Rocky Sharp, to ratify the PRC membership roster. Motion carried.**

### **Transition Parameters**

Members discussed the transition and project exceptions process. Mr. Benson said a common question is the status of projects already under contract. For example, his firm has a preconstruction services contract in place for a GC/CM project with the City of Kent to build a new events center. The contract calls for a Maximum Allowable Construction Cost (MACC) at 90% (end of July). The customer and company are not clear about how to handle the contract. Kent is not interested in spending the money until construction costs are determined. There are other projects facing a similar situation. The Board should provide guidance to the public about how such projects will be handled.

Mr. Absher said it's clear the new law applies after July 1, 2007. There is an early bid pack authorization in the new law. Either party could terminate the contract if the company moves forward with the City of Kent and enters into a MACC agreement.

Ms. Septelka said her agency currently is involved in a project anticipated to take four years to complete. It is assumed the project's applicability is under previous law. Ms. Yang emphasized that there is no old law. Mr. Eng said the new law also applies to subcontracts.

Larry Sheahan, Attorney General's Office (AGO), representing GA and CPARB, explained there is confusion related to how the new law applies to ongoing projects. There are exemptions in the new law for projects advertised and not signed prior to July 1, 2007. As of July 1, 2007, there is a new law. It's important for public owners to ask legal counsel to evaluate how ongoing projects comply with the new law. If an owner is in the process of negotiating the MACC, working through issues, and a contract is signed, there is nothing in the law that requires the owner to restart the process. However, the owner can't ignore the new law.

Discussion followed about the Board's ability to exempt projects from provisions of the new law. Mr. Eng said it seems reasonable the CPARB could make a statement that nothing in the law requires renegotiation of a project or contract amendments already signed either at the MACC or contractor/subcontractor levels. Mr. Kommers added that if subcontract conditions are not in compliance with the new law, as a subcontractor he would request a change.

Representative Haigh reported the Legislature recognized a transition period is typical with any law implementing significant changes. There are issues to work on and refinements of the law can occur in subsequent sessions.

Mr. Absher agreed with Mr. Kommers. Subcontractors do not have a choice but to incorporate the new provisions into public bid packages. The City of Kent might want to ask the Board for an exemption prior to implementation of the new law.

Further discussion ensued about setting the MACC, Section 502 (provides for the Board granting an exemption for projects advertised before the effective date of the section), the CPARB should set parameters, establish criteria for granting exemptions (including a demonstrated hardship), and considering exemption requests subject to the owner and GC/CM contractor agreeing to seek an exemption.

Mr. Absher said he prefers remaining silent on the matter. The Board can address requests as they emerge. Each circumstance could be very unique.

Ms. Deakins reviewed Sections 502 and 503.

Mr. Maruska said an issue is what statute governs when an owner applies for an exemption under Section 502 that is part of Bill 1506. Mr. Kommers replied the Board would not waive the entire bill. An owner could apply for an exemption from a provision of the act.

Mr. Sheahan said it's important for the Board to consider how it will respond to an owner requesting an exemption.

Mr. Eng said if an owner plans to request an exemption, the owner and GC/CM should also come prepared with a joint recommendation on how to proceed.

Ms. Deakins said she receives multiple questions about the confusion on a daily basis. It might be prudent to develop a Frequently Asked Questions (FAQs) document for the CPARB website.

Mr. Kommers agreed with comments articulated by Mr. Absher. The Board is obligated to respond to a request for an exemption within 60 days.

Ms. Deakins asked members to bring a list of questions to the next meeting.

Ms. Moses suggested the Board should develop guidelines and criteria on the types of conditions qualifying for exemption. The information would provide guidance to legal counsel and public owners about CPARB's position when it created the new law. Mr. Kommers acknowledged the suggestion. Mr. Eng said the language provides the Board with broad discretion to do what it believes is right. A record of CPARB's discussions about a specific exemption action will also be available.

The Board agreed to take no action. Owners are able to request an exemption of the new law.

Members discussed scheduling exemption requests for the Board's consideration. The legal community is also confused about how to interpret the new law. Ms. Yang said it's likely that a competent owner will discuss the issue with peers and determine a recommendation. Mr. Eng commented that there is no particular form or format for applying for an exemption. The Board needs to understand the problem, know applicable statutory provisions, understand the hardship the owner is suffering, and agree on a resolution.

### **Set Next Meeting Agenda**

Members discussed the necessity of meeting in July. Both subcommittees have cancelled their July meeting. The PRC is meeting on July 26, 2007.

Representative Haigh suggested retaining the meeting date in light of the discussion. The meeting can be cancelled if required.

Several members from the audience testified some owners will likely approach the Board to discuss potential exemptions for some projects. Discussion followed about a deadline to receive exemption requests to meet noticing requirements and CPARB's meeting schedule.

Ms. Yang said there was a suggestion to cover new issues (competitive negotiation and best value) in August. Mr. Kommers and Mr. Absher said they prefer postponing new presentations and materials until the September meeting.

Representative Haigh suggested updating the Governor's Office on the exemption issue and deadline for exemption requests to meet the Board's July meeting date. The Governor's Office can publicize the information to public entities and other interested parties.

Ms. Yang noted owners have until June 20, 2007 to submit a request for an exemption for the Board's July meeting. The Board will discuss the need for an August meeting next month.

Ms. Deakins introduced Roland Orr, Contract Manager for GA. Mr. Orr is assuming coordination of the PRC and is hiring support staff.

**Adjournment**

**With no further business, Ms. Yang adjourned the meeting at 11:17 a.m.**

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Olivia Yang, CPARB, Acting Chair

Prepared by Cheri Lindgren, Recording Secretary  
Puget Sound Meeting Services