

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue. Hearing Room A
Olympia, Washington
September 13, 2007
9:00 AM**

Final Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Rick Slunaker (for Daniel Absher)	General Contractor	Rocky Sharp	Specialty Contractors
Gerald "Butch Reifert	Architects	Robert Maruska	Ports
Ed Kommers	Specialty Contractor	Senator Phil Rockefeller	Senate (D)
David Johnson	Construction Trades Labor	VACANT	General Contractors
Olivia Yang	Higher Education	VACANT	Engineers
John Lynch (Chair)	General Administration	VACANT	Construction Trades Labor
Larry Byers	Insurance/Surety Industry	VACANT	OMWBE
Rodney Eng	Cities	VACANT	Private Industry
Nora Huey	Counties		Private Industry
Wendy Keller	Public Hospital Districts		
Dan Vaught	School Districts		
Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)		
Senator Dale Brandland	Senate (R)		
Representative Dan Kristiansen	House of Representatives (R)		

STAFF & GUESTS

Nancy Deakins, GA	Pete Crow, WA State Association of Plumbers
Searetha Kelly, GA	Dave O'Meara, IUPAT
Cheri Lindgren, Puget Sound Meeting Services	Larry Stevens, MCAWW/NECA
Miriam Israel Moses, Rebound	Pam Johnson, OST
Rodger Benson, MA Mortenson, PRC Chair	Stan Bowman, AIA WA Council
Ashley Probart, Association of WA Cities	

Welcome & Introductions

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:11 a.m. A meeting quorum was attained. Everyone present provided self-introductions.

Dan Vaught arrived.

Approve Agenda

Rodney Eng moved, seconded by Dave Johnson, to approve the agenda as presented. Motion carried.

Approve June 14, 2007 Meeting Minutes

Ed Kommers moved, seconded by Olivia Yang, to approve the June 14, 2007 minutes as presented. Motion carried.

Senator Dale Brandland arrived.

Public Comments

There were no public comments.

Project Review Committee Report

Project Review Committee (PRC) Chair Rodger Benson briefed the CPARB on the PRC's July and August agenda topics and actions:

- Updated bylaws to reflect CPARB input.
- Finalized evaluation panel scoring sheets.
- Finalized panel procedures.
- Larry Sheehan with the Attorney General's Office (AGO) provided Open Public Meetings Act (OPMA) training.
- PRC approved two public body certifications - University of Washington (UW) and Washington State University (WSU).
- A General Contractor/Construction Manager (GC/CM) project application review for Klickitat County Public Hospital District #2 was considered. The Skyline addition and renovation project was denied primarily because of the lack of owner and GC/CM experience and concerns with the budget and schedule.
- Sue Jones, AGO, provided Ethics training.
- PRC panels reviewed four project applications:
 - King County Housing Authority – Greenbridge Early Learning Center project – approved.
 - Nine Mile Falls School District – Nine Mile Falls/Lake Spokane Elementary projects – approved.
 - Othello School District – Lutucaga Elementary/McFarland Middle/High School Projects (bundled applications) – denied. Mr. Benson explained bundling the applications was detrimental because the high school component was not appropriate for the GC/CM delivery method. In addition, the owner lacked GC/CM experience. Panel members were also concerned about the proposed schedule.
 - Western Washington University - Miller Hall Renovation – approved.
- Decision letters were prepared and distributed with reasons for denial.

PRC's next meeting is scheduled for September 27, 2007 at the Northwest Carpenters Facility in Kent. Othello School District and Klickitat County Public Hospital District #2 have resubmitted project applications. WSU is requesting public body certification for Design Build (DB).

Representative Dan Kristiansen arrived.

Mr. Benson said several PRC positions remain open. The challenge is creating a balanced public/private review panel when public agency panel members are required to recuse themselves because of potential conflict of interest. PRC is heavily weighted on the private side. Procedures established are working well. A long-term meeting location has not been established. There were discussions about scheduling meetings in Eastern Washington. PRC members are pleased General Administration (GA) hired Robin Hofstad to support the committee. The bylaws require all members to participate in agency certification reviews. All members were asked to observe individual project review sessions and provide constructive feedback. An agenda item for the September meeting is discussing panel responsibilities and types of questions that are appropriate.

Chair Lynch thanked Mr. Benson, committee members, and support staff for their excellent work. He acknowledged and thanked the Northwest Carpenters Association for providing meeting space.

Mr. Slunaker asked whether Othello School District's intent to bundle applications was because of the process or whether the owner bundled the projects as one contract. He said he was unaware of the potential to bundle project applications. Mr. Benson replied that Othello planned to contractually commit to one GC/CM for all three schools. Othello School District is resubmitting the request without the high school component. The owner planned to use the high school for space and mobilization purposes. The three school sites are within close proximity to one another. Committee members agreed to include a warning on the application instruction sheet about risks associated with bundling projects. If one component does not meet required criteria, an owner faces denial of the entire package.

Discussion ensued about Mr. Sheehan's advice concerning the bundling strategy. Mr. Benson added that Othello owners discussed the difficulty of attracting bidders given the current construction market. Additionally, Othello believed economies of scale could be achieved through bundling.

Mr. Slunaker asked whether the statute allows bundling project applications. Mr. Benson said there wasn't a threshold issue concerning the project application. PRC members agreed there must be a compelling reason for an owner to justify bundling project applications.

Mr. Eng asked about the types of guidelines or conclusions PRC considers during a review of a project. Mr. Benson said the committee discussed the issue and agreed to monitor the issue. It's unknown at this time whether there will be a problem. Othello proposed to use one architect, one owner representative to manage the project, and one GC/CM for all three projects.

Ms. Deakins said packaging projects is up to the GC/CM.

Mr. Johnson suggested the CPARB should address the issue. There could be problems with open and competitive bidding laws, eliminating bidders and competition, or tightening up the market where only a few contractors have the capacity to take on three or four projects that are bundled together. Market conditions can change at any time.

Mr. Benson said the PRC asked Othello if it would bid the work bundled if it did not receive authority to use GC/CM. The owner replied that the district will bid the work as a bundled package.

Mr. Johnson commented that he's unaware of any school district bidding three projects at one time.

Ms. Keller pointed out that proximity is also a factor. Bundling projects makes sense when buildings are located on the same site. The issue is whether the sites are located separately and of sufficient size to warrant separate bidding of the projects.

Mr. Byers pointed out that there is a risk with bundling as all project components are affected if a major subcontractor fails. He asked whether Othello provided a breakdown of costs for each facility. Mr. Benson indicated the costs were separated.

Mr. Eng suggested members shouldn't assume bundling projects is a bad idea. As an example, it makes economic sense to combine three or four street overlay projects under one contract. There are significant

administrative costs in releasing a bid. The PRC is asking the right questions and considering issues Board members understand and have knowledge of.

Mr. Slunaker suggested it might be useful for the CPARB to direct the PRC to develop overarching criteria for bundling applications.

Chair Lynch questioned whether the CPARB has the authority to write guidelines.

Mr. Vaught said school districts do occasionally bundle projects. He shared some examples.

Ms. Keller said the PRC will take a reasonable approach when evaluating projects. It's difficult to write guidelines when it's unclear whether there is a problem

Mr. Benson said PRC members are exercising due diligence during a review. There are many reasons why bundling projects and using the same general contractor might be in the owner's best interest. Othello's project was denied because an element of the project was not appropriate for the delivery method.

Mr. Eng said clearly written acceptance and rejection letters will provide owners and the public guidance on the review process.

Ms. Moses expressed concerns about consistency in the methodology. She suggested PRC develop a database of decisions that can be easily accessed by committee members and the public.

Ms. Keller said documenting salient characteristics and meeting discussions could be used as a resource to develop guidelines.

Mr. Slunaker suggested decisions should be published. Guidelines will become clearer and more easily understood. Mr. Benson said decisions are available electronically, but not the decision letter.

Ms. Deakins said there have been discussions about whether approval and rejections letters should be available online. She noted meeting minutes are also available.

Ms. Huey supported publishing approval and rejection letters online.

Chair Lynch commented on the need for sensitivity of owner's whose project has been denied. He agreed that letters provide good feedback to owners applying in the future.

Senator Brandland expressed appreciation for the comments. If rejections occur, owners might be compelled to contact him or Representative Haigh. Consistency with the process is important.

Wendy Keller moved, seconded by Nora Huey, to consider publishing project approval and/or rejection letters online to provide transparency within the process.

Mr. Johnson said as the process moves forward it appears appropriate to develop general criteria about when bundling starts and stops. He said he would like to avoid any legal challenge associated with restricting the market.

Motion carried unanimously.

Brief Reports from Subcommittees

Expansion Subcommittee – Olivia Yang

Ms. Yang reported the Expansion Subcommittee met on September 4, 2007 and discussed four issues: Design-Build-Operate-Maintain (DBOM), DB under \$10 million, Job Order Contracting (JOC) reporting format, and best value procurement.

Regarding the DBOM method, Mr. Kommers presented a proposal in response to UW's request to allow procurement of operate-maintain for certain DB projects. The CPARB reviewed the proposal to amend Revised Code of Washington (RCW) Chapter 39.10 in 2008 as outlined in the meeting notes. Subcommittee members agreed and recommended CPARB develop guidelines to evaluate DBOM projects. Guidelines will also require projects to describe how bonding will be handled.

Discussion ensued about whether guidelines will be finalized for the 2008 legislative session. Demonstration projects would come before the PRC once guidelines are developed. The amendment doesn't address whether the PRC can't approve a project until guidelines are in place.

David Johnson moved to approve the language as written with a change to item b, or adding a separate bullet point, to stipulate that guidelines for award for DBOM are developed prior to project approval.

Chair Lynch recommended receiving subcommittee reports prior to entertaining a motion to amend Chapter 39.10. The CPARB has time between now and the 2008 session to consider an amendment package. He suggested deferring formal acceptance at this time. Members will discuss strategic planning later in the day. A concern is approving legislative changes individually.

Mr. Johnson said his intent is clarifying that no project will be approved prior to developing guidelines.

Ms. Huey said there are a number of industry-wide issues that also require action by the CPARB.

David Johnson withdrew the motion.

Ms. Yang reported Mr. Probart and Ms. Murray proposed amending current legislation to allow DB projects under \$10 million. Subcommittee members discussed limiting the proposal to 30 projects (five per year) with a threshold of \$2 million to \$10 million. A list of project types was provided to members.

Ms. Keller expressed concerns that the project list is limiting. Each project will be reviewed on its own merits. She asked why a list is needed if a project meets established criteria.

Mr. Slunaker said the goal was to limit that type of activity. Stakeholders have not had an opportunity to weigh in on the issue. He asked whether the projects would go through the PRC. Ms. Yang affirmed that they would undertake the PRC review. Mr. Slunaker said he's comfortable with that approach. Some stakeholders don't agree that DB should be expanded.

Ms. Yang said the subcommittee also discussed the need for data collection and lessons learned. If the CPARB concurs with the concept, Ms. Probart and Ms. Murray will revise the attachment and present the draft to the Board for consideration.

Chair Lynch suggested approving draft language concepts recognizing it moves issues to the next tier.

Ms. Eng commented that he envisions a single bill with technical amendments to RCW Chapter 39.10. The CPARB could agree on concepts to enable bill drafters to draft language for review.

Ms. Yang reported a proposed JOC reporting format (draft attached to meeting notes) was presented at the subcommittee meeting. She reviewed changes suggested by subcommittee members. State law requires an annual report; however, a format was not prescribed.

Ms. Deakins said JOC annual reporting could be incorporated in the data collection database.

Discussion ensued about CPARB data collection responsibilities. Ms. Moses commented the public would like access to JOC annual report information. She asked whether owners can complete the report online and whether data will be available electronically. Ms. Yang suggested having the subcommittee work on logistical details at the next meeting. She confirmed that the intent is for owners completing the report online. Information will be available to the public electronically.

Chair Lynch briefed members on his presentation to the subcommittee regarding best value contracting, which is a potential Alternative Public Works (APW) method the Board could consider in 2009.

Mr. Slunaker asked for staff to provide a copy of the presentation to the Board.

Industry-Wide Issues – Nora Huey

Ms. Huey reported the Industry-Wide Issues Subcommittee met on September 7, 2007 and discussed responsibility guidelines, general contractor liability for trust payments/defaulting subcontractors, in-state preferential bidding for Washington fabricators, and RCW 39.04.015 – Increasing percentage negotiation with low bidder.

Ms. Huey referred to a draft *Suggested Guidelines for Bidder Responsibility* document. She reviewed mandatory bidder responsibility criteria, optional supplemental bidder responsibility criteria, and mandatory subcontractor responsibility criteria components. Subcommittee members believe the guidelines (first 14 pages) are ready for publication. Additional work is needed on the appendices. Specific to Appendix C, *Resources*, there was some debate about whether to include specific resources (people and phone numbers) or where to call with questions. She acknowledged Mr. Purdy's work associated with reviewing responsibility guidelines.

Mr. Slunaker suggested the Chair send a letter to Mr. Purdy and his employer acknowledging Mr. Purdy's accomplishments.

Mr. Eng requested deleting the last sentence in footnote 3 at the bottom of page 5. He expressed concerns about the second sentence under adequate competition at the top of page 6. The language implies an owner cannot use the criteria even if there is a compelling reason. Ms. Huey said the intent is that an owner should be aware of how many potential bidders would meet or exceed the criteria. If there are only two, the subcommittee is okay with that.

Mr. Kommers announced that he requested that specialty contactors have an opportunity to review the guidelines, specifically the optional remedy period provisions. It's important to ensure that responsible bidders

who might make a technical mistake are not rejected from a bid. He said he's asked legal counsel to evaluate the language.

Ms. Keller said GA could post draft guidelines on the CPARB's website with a note indicating the document is a work in progress.

Ms. Deakins added that draft guidelines could be posted over the next month for comment. The CPARB could finalize the document in October.

Mr. Probart suggested requesting Municipal Research Services Center (MRSC) post draft guidelines on its website as another public outreach option.

Rodney Eng moved, seconded by Wendy Keller, to publish the draft *Suggested Guidelines for Bidder Responsibility* (first 14 pages) document for comment on CPARB's website stating comments are due to the Industry-wide Subcommittee before its next meeting, and to strike the last sentence in footnote 3 on page 5.

Dialogue followed about including a note specifying that a set of appendices will follow and whether to post the appendices for public comment. Ms. Huey reported the subcommittee is not comfortable publishing the appendices at this time.

Motion carried unanimously.

Ms. Huey reviewed other issues and outcomes from the subcommittee meeting concerning the three remaining topics.

Chair Lynch recessed the meeting from 10:49 a.m. to 11:04 a.m.

Ed Kommers moved, seconded by Nora Huey, to consider the language proposed for DBOM as part of an overarching bill for 2008 if possible, and direct the Expansion Subcommittee to continue to work on guidelines concurrently. Motion carried.

Rodney Eng moved, seconded by Olivia Yang, to direct the Expansion Subcommittee and task force (Mr. Probart and Ms. Murray) to continue finalizing DB under \$10 million language in consultation with Mr. Slunaker and other interested parties, and develop legislation that provides for some demonstration projects from \$2 million to \$10 for DB.

Mr. Johnson said a concern for labor and the contracting community is the bundling issue. There are a limited number of DB firms and potential unintended consequences (restricting the bidding environment). Lowering the threshold might create opportunities for smaller companies to develop relationships.

Motion carried unanimously.

Membership of Board & Project Review Committee (PRC)

Ms. Deakins reported there are six vacancies on CPARB. The appointment terms of Ed Kommers and Butch Reifert have expired. However, they will continue to serve until new members are appointed. The vacancies present an issue for establishing a quorum (10 members required). Ms. Deakins advised that she's contacted the Governor's office. GA drafted and distributed a recruitment announcement. Applications are due to the

Governor's office by September 30, 2007. It's likely the vacancies will not be filled in time for the October meeting. She emphasized that everyone's attendance is critical.

Ms. Deakins and Chair Lynch asked members to actively help recruit qualified candidates.

Ms. Deakins reported the Organization and Operation document has been updated to reflect the new statute.

Discussion followed about private industry representatives.

Ms. Deakins said the PRC currently has two vacancies from labor, one position representing cities, and an OMWBE position.

Mr. Eng indicated he will follow-up on a name he submitted.

Mr. Kommers noted an individual from Vancouver participated in May's GC/CM training.

Discussion followed about revising CPARB procedures to allow a substitute attending for a member to vote. Ms. Keller suggested changing voting requirements to allow alternates to vote when vacancies exist or on an ongoing basis.

Mr. Eng questioned whether allowing an alternate to attend subverts the Governor's appointment intent.

Chair Lynch suggested adding a requirement that each member appoint an alternate who can act on the member's behalf. Ms. Keller proposed adding a caveat that an alternate cannot attend two consecutive meetings.

Senator Brandland acknowledged Mr. Eng's point. Typically, language concerning a designee is included in the statute for boards or committees. Appointing a designee may subvert the appointment process.

The CPARB agreed to discuss the issue at its October meeting.

Strategic Plan

Chair Lynch reviewed information on developing a new list of issues for the 2008 legislative session and beyond. He asked members to consider policies and be prepared to discuss the subject at the October meeting.

Ms. Deakins reviewed a draft strategic plan focusing on all public works capital construction projects. A section recognizing Board accomplishments and 2008 and future session topics was added to the executive summary section. The issue topics are not sequenced. She highlighted additional strategic plan elements.

Mr. Eng commented that the list of possible topics for 2008 is good; however, he's unsure whether the list is complete. The Board should be looking at a strategic plan for the 2009 session for issues identified in 2008.

Chair Lynch and Ms. Deakins said there are items identified that the Board might want to consider for 2008 that did not get through the 2007 session, such as, House Bill (HB) 2009 (trench excavation) and a clean-up bill.

Mr. Slunaker asked that the Board consider how to fold HB 2009 with other legislation so the bill is not lost. The sixth bullet under possible 2008 topics should be corrected to read, "general contractor liability for *trust*

wages/defaulting contractors.” He said he anticipates that the Industry-wide Subcommittee task force will have draft language concerning the sixth bullet topic as well as “pay undisputed amounts of changes promptly” for the 2008 session.

Chair Lynch reported there appears to be a gap in the statute. The Board might want to review the law to determine if there are opportunities for public agencies to circumvent the process and, if so, strengthen the law.

Mr. Kommers said the CPARB should continue to support training for private and public sector APW. A second session concluded yesterday. Currently, there are 40 names on a waiting list. Individuals are needed to develop the curriculum and materials. Project managers and trainers for each session are also needed.

Mr. Eng asked staff to pull and forward the original policy “wish list” to Boardmembers.

Training Update

Ms. Yang reported a four-day GC/CM training session was conducted in May. A second two-day session concluded on September 12, 2007. There are requests for DB training. She thanked Mr. Kommers for his work and contributions as a faculty member and organizer. His contributions in terms of time and quality of training are significant.

Chair Lynch expressed appreciation for everyone’s time and efforts in coordinating APW training opportunities.

Representative Haigh said the Board might want to consider whether a person is needed to administer a training program and, if so, suggest a budget to support training staff.

Operating Budget Update

Ms. Deakins provided an operating budget and expense status report. The PRC and other elements within the law are not funded in GA’s budget. PRC expenses are approximately \$10,000 per month. The separate \$75,000 line item is allocated for annual evaluation of data.

Discussion followed about asking the Governor for a supplemental budget. Chair Lynch confirmed GA is submitting a supplemental budget request in the 2008 session for \$308,272. The agency has hired staff to support the PRC and is currently absorbing the funding shortfall.

Representative Haigh suggested the Board submit a cover letter addressed to the Governor accompanying the supplemental budget request. The letter should highlight CPARB and PRC successes and the need for additional funds.

Mr. Johnson said there are no resources identified for training in the operating budget. He suggested the cover letter and supplemental budget request include that element as well and cite the overwhelming response. Chair Lynch said requesting funds for training would be considered as a separate item in the future.

Members agreed to discuss training at the next meeting. Ms. Yang stated she and Mr. Kommers could speak with the AGC Education Foundation and others about developing a training strategy.

Set Next Meeting Agenda

A tentative October agenda was discussed as follows:

CPARB FINAL MINUTES

September 13, 2007

Page 10 of 10

- Joint Legislative Audit and Review Committee (JLARC) briefing CPARB about sunset review
- Strategic Plan
- Subcommittee reports and draft language proposals
- Quorum and voting issue
- Chair and Vice Chair appointments
- Best value contracting discussion

Adjournment

With no further business, Chair Lynch adjourned the meeting at 11:55 a.m.

John Lynch, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services