CAPITAL PROJECTS ADVISORY REVIEW BOARD
1115 Washington Street Southeast
Office Building 2
Conference Room SL-03
Olympia, Washington
May 14, 2009
9:00 AM

Final Minutes

MEMBERS PRESENT	REPRESENTING
Daniel Absher	General Contractors
Vince Campanella	General Contractors
Damon Smith	Engineers
Ed Kommers (Vice Chair)	Specialty Contractors
David D. Johnson	Construction Trades Labor
Cynthia Cooper	OMWBE
Christopher Hirst	Private Industry
Olivia Yang	Higher Education
John Lynch	GA
Rodney Eng	Cities
Robert Maruska	Ports
Dan Vaught	School Districts
Rep. Kathy Haigh	House (D)
Rep. Bruce Dammeier	House (R)

MEMBERS ABSENT	
Senator Rodney Tom	Senate (D)
Senator Dale Brandland	Senate (R)
Norman Strong	Architects
Rocky Sharp	Specialty Contractors
Mark Riker	Construction Trades Labor
John Ahlers	Private Industry
Larry Byers	Insurance/Surety Industry
Gary Rowe	Counties
Vacant	Public Hospital Districts

STAFF & GUESTS

Nancy Deakins, GA
Searetha Kelly, GA
Cheri Lindgren, Puget Sound Meeting Services
Jeanne Rynne, OSPI
Van Collins, AGC
Ashley Probart, AWC
Joe Barnett, King County
Robyn Hofstad, GA
Dick Lutz, Centennial Construction
Larry Stevens, MCAWW, NECA
Rick Slunaker, AGC
Jim Anderson, Burton Construction
Ron McInerney, Burton Construction
Dorcas Nepple, Port of Tacoma

Welcome & Introductions
Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:06 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

Approve Agenda
Dave Johnson moved, seconded by Cynthia Cooper, to approve the agenda as presented. Motion carried.

Approve March 12, 2009 Meeting Minutes
Dave Johnson moved, seconded by Ed Kommers, to approve the March 12, 2009 minutes as presented. Motion carried.

Public Comments

Jim Anderson, Burton Construction, Spokane, said he oversees job order contracts (JOCs) for the University of Washington (UW), Washington State University (WSU), Department of General Administration (GA), and Spokane Public Schools. He expressed concerns regarding JOC within the state. To the best of his knowledge, the Tacoma and Richland School Districts awarded JOCs without using the competitive procurement process outlined in Revised Code of Washington (RCW) 39.10.430. The section requires public bodies to solicit proposals from certified minority or women owned contractors and publish requests for proposals (RFPs) in a statewide publication. Officials with Tacoma and Richland School Districts believe they were authorized to enter into a JOC based on their membership in the King County Director's Association (KCDA). KCDA is a nonprofit purchasing cooperative owned by Washington's public school districts. The KCDA awarded a JOC to Centennial Contractors in July 2007. The association believes the JOC with Centennial will allow its participating members to enter into JOCs. Tacoma and Richland have a $4 million annual contract up to three years. With multiple members participating, the single JOC awarded in 2007 could far exceed the $4 million annual maximum allowed by state statute.

The first question is whether KCDA was authorized to award the JOC in the first place because they are not identified on the list (RCW 39.10.420) of public agencies authorized to use the JOC procedure. An argument could be made that KCDA is a cooperative and not a state agency and can issue any contract. However, that does not preclude public owners from following the alternative public works (APW) statute 39.10.

Burton Construction wants an opportunity to compete for those JOCs, which is an important part of its business. Other questions include:

- Does the current legislation allow schools to award their own JOCs because they are KCDA members?
- If technically allowable, is it within the intent of RCW 39.10?
- If allowable but not within the intent, should CPARB consider clarifying the language during the next legislative session?
- If not allowed, what steps should be taken to correct the current condition and prevent similar situations in the future?

In response to a request from Representative Haigh, Mr. Anderson provided an overview of the purpose of the KCDA to create volume purchasing and offer single-source purchasing for school supplies, furniture, equipment, and services requested by members.

Discussion ensued on whether the KCDA followed the guidelines under 39.10 when it advertised the RFP, and whether school districts are authorized to use the JOC model. Mr. Anderson explained that KCDA followed 39.10 closely. KCDA believes the JOC awarded to Centennial Contractors in 2007 allows every school district to have their own $4 million annual contract.

Ms. Deakins said school districts do not include educational cooperatives.

Mr. Eng said the issue is grouping a JOC with four school districts and a $16 million contract. School districts are required to meet the APW statute. The CPARB does not have enforcement authority, but could clarify the statute.

Members discussed other agencies tagging onto the KCDA contract, such as the cities of Seattle and Tacoma. The agency also offers buying power for specialty items.

Mr. Lynch asked whether the RFP advertisement was directed to school districts. Mr. Anderson said the RFP was focused on all school districts in the state.

Mr. Eng referred to agencies using the state contract to purchase computers. It's one thing if a school district(s) is purchasing carpet. The problem is when the authority extends into the public works arena. School district(s) are not applying public works laws when installing carpet.

Ms. Yang asked whether installation is incidental to the material. Mr. Eng said public work still applies to the installation whether its small works or otherwise. It does not fall within a "purchase service."

Van Collins, Associated General Contractors (AGC), reported the issue was brought to the AGC's attention. AGC is meeting with the KCDA director on May 18, 2009. It's his understanding that KCDA did not award a JOC contract. KCDA bifurcated the procurement process. He acknowledged the financial impact if all school districts participate in the JOC contract. He referred to a recent bid in Pierce County for the construction of a new stadium, which also included Astroturf, artificial track surface, and bleachers. All three items are under procurement through KCDA, including installation.

Mr. Vaught said he believes KCDA's intent is to follow public works law. For example, portables are built off site. Schools purchase portables from KCDA, which are delivered and installed. The installation also has to follow all public works criteria. He recognized the implications of a rolling contract with no parameters, which probably was not the intent of JOC legislation. He commented on past practices with public works construction that KCDA has been allowed to do over time. The Board should understand how that's been allowed before criticizing the current situation. He asked whether KCDA has the authority to circumvent the RCW. He questioned what rules apply to the procurement method. It appears the Board's intent is that each school district would have to be approved to move forward within the framework of the $4 million umbrella contract. KCDA is not technically considered a school district.

Mr. Kommers suggested directing KCDA's attention to the Attorney General's (AGs) legal opinion on housing authorities.

Mr. Collins responded to questions and indicated KCDA made the selection based on coefficients and qualifications. The process stopped at that point in terms of the actual execution of a JOC. School districts can tag along and execute their own JOCs based on the single solicitation KCDA completed.

Ron McInerney, Burton Construction, pointed out that the key to public works is a competitive bid process for any project involving public money, which applies to this situation. A competitive contract was awarded in July 2007 for $4 million. That contract was used to spin off multiple other contracts that were not advertised. There is no competition, which violates the intent of public works law for the state.

Mr. Johnson said another issue is whether the solicitation was published statewide and in local newspapers. Mr. Collins said he believes the original solicitation was published in a newspaper within each county within the state. However, the advertisement was not specific to a particular school district.

Mr. Johnson said the JOC delivery is intended for government agencies such as GA, Washington State Department of Transportation (WSDOT), or public schools. KCDA is not a public agency or a contracting entity. Another issue involves paying prevailing wages for work performed under a JOC contract.

Dick Lutz, Centennial Contractors, reported that Centennial Contractors had an opportunity to work with school districts through KCDA. Its bid process mirrored the one used for the UW. The company's bid

package was specifically related to KCDA's statewide RFP. Centennial Contractors contract is with the school district and not KCDA. KCDA processed the procurement. The coefficient is the same for any locale in the state. Centennial Contractors must follow the JOC statute, such as filing a separate OWMBE process, payment of prevailing wages, and soliciting subcontractors through advertisements.

Mr. Collins commented that KCDA believes it's operating within the law. The process KCDA followed was under the statute.

Discussion followed on school districts paying a fee to join KCDA. Centennial Contractors pays KCDA a portion of its coefficient with each work order.

Mr. Johnson said a contractor willing to pay KCDA is given a preferential status. He referred to unintended consequences that the Board did not foresee when considering JOC. The CPARB should question whether KCDA is authorized to use APW delivery models.

Representative Haigh and Mr. Kommers suggested inviting KCDA representatives to provide a presentation at the Board's next meeting. Members generally agreed with the suggestion.

Mr. Vaught indicated he'll follow up with KCDA.

Report from Project Review Committee

Chair Maruska reported the Project Review Committee (PRC) conducted a project application review for general contractor construction manager (GC/CM) for Mason County Public Utility District No. 3 Maintenance and Operations Center. The seven-member panel unanimously approved the project application. The presentation was a reapplication. The owner addressed concerns identified by the PRC during the initial submittal.

The PRC did not receive any project or agency certification applications to review in April and did not meet.

PRC Membership

Chair Maruska reported PRC members are appointed for two-year terms. The incoming chair's appointment, as well as other terms, expires at the end of June 2009. He asked the Board to consider reappointing the incoming chair (Phil Lovell) for an additional two-year term and extend other terms expiring at the end of June for a period of six months pending reappointment for two-year terms.

Mr. Johnson moved, seconded by Mr. Kommers, to reappoint Phil Lovell for an additional two-year term and extend other terms expiring at the end of June for a period of six months pending reappointment for two-year terms.

Ms. Hofstad advised that the Board previously extended Mr. Lovell's term when he was elected vice chair. The terms expiring as of July 1, 2009 could be extended for six months pending reappointment.

The makers of the motion agreed to a friendly amendment, to extend PRC terms expiring as of July 1, 2009 for a period of six months pending reappointment to two-year terms.

Discussion ensued on the process for existing members who want to continue serving on the PRC. Ms. Deakins noted the Governor's directive is that advisory board members will serve until replaced. Extending expiring terms for six months gives PRC members an opportunity to consider whether they would like to serve another full term.

The motion as amended carried unanimously.

Review End Result of Legislative Session
Representative Haigh reported the Board did a good job during the 2009 legislative session. The previous discussion on the KCDA emphasizes the importance and value of the CPARB. She suggested not packaging bills if one bill is more controversial, as it will impede passage of the remaining bills. She encouraged the Board to carefully consider bill titles. A broader title lends itself to the addition of other bills, which can impact its outcome.

Ms. Deakins recognized Marsha Reilly's efforts to craft bill titles and language. She reviewed end results of legislation and addressed comments:

- **House Bill (HB) 1195 and Companion Substitute Senate Bill (SSB) 5399 – Regarding payment of undisputed claims** – Passed.
- **HB 1196 – Increasing the dollar limit for small works roster projects** – Passed.
- **HB 1197 – Regarding alternative public works contracting procedures** – Passed.
- **HB 1198 (see Senate House Bill [SHB] 1847) – Changing public works bid limits** – Passed.
- **HB 1199 – Regarding retainage of funds on public works projects** – Passed.
- **HB 1200 – Expanding the ability to negotiate an adjustment to a bid price on public works to municipalities** – Died.

Other bills for public works, which passed include:

- **Engrossed Substitute Senate Bill (ESSB) 5873 – Apprenticeship utilization** – Passed.
- **HB 1555 – Relating to the recommendations of the joint legislative task force on the underground economy in the construction industry** – Gives Labor & Industries (L&I) and Unemployment Security a lien on retainage on public works projects before subcontractors and suppliers. The joint task force was extended.

Discussion ensued on elements pertaining to HB 1555 and ESSB 5873.

Ms. Deakins reported HB 1197 requires the Board to develop guidelines for review and approval of design build demonstration projects that include operations and maintenance (DBOM) services. Ms. Yang volunteered to lead in developing the guidelines.

- **HB 1641 – Regarding the University of Washington's public works contracting procedures** – Died.
- **HB 1690 – Authorizing APW contracting procedures** – Died.
- **SSB 5760 – Regarding the University of Washington and Washington State University's public works contracting procedures** – Died.
- **HB 2151 and SSB 5994 - Eliminating boards and commissions on June 30, 2010** – SSB 5994 removed CPARB from the elimination list.
- **HB 1837 and Companion SSB 5969 – Regarding listing subcontractors on public works project** – Died.
- **Engrossed House Bill (EHB) 1836 - Regarding public works involving off-site prefabrication** – Failed.

Ashley Probart, Association of Washington Cities (AWC), commented on the difficulty of moving senate bills to the House. He spoke on the importance of chance encounters during the session to help legislation advance. Mr. Probart suggested the Board identify senate champions alleviating pressure on the House to deliver.

Chair Maruska advised that Senator Dale Brandland resigned his position on the CPARB because of legislative commitments and the travel distance to meetings.

Chair Maruska recessed the meeting from 10:24 a.m. to 10:44 a.m. for a break.

Task Force Status Report

Design Build Definition for Modular – Ed Kommers

Mr. Kommers provided an overview of the history of the design build (DB) modular amendment and stakeholders participating on the task force. The task force developed draft language for action by the Board at a future date. The specific change reads as follows: "The design-build procedure also may be used for the construction or erection of *portable facilities as defined in WAC 392-343-018*, pre-engineered metal buildings, or not more than five prefabricated modular buildings *per installation site*, regardless of cost and is not subject to approval by the committee." The task force proposes the Board approve the language for inclusion in the 2010 legislative package.

Jeanne Rynne, Washington Office of Superintendent of Public Instruction (OSPI), reported that Washington Administrative Code (WAC) 392-343-018 defines portable structures for K-12.

Discussion ensued on the definition of portable facilities. The amendments are specific to the DB delivery model.

Mr. Lynch asked whether the proposed language would have addressed Board concerns with a previous Tacoma Housing Authority project. Mr. Kommers said the housing authority would not have been able to claim the exemption based on the size of the project. The agency would have been required to submit a project application to the PRC for approval because more than five prefabricated modular buildings were assembled on one site.

Members discussed a trend in the construction industry of assembling several modular components into one building, which is different from the typical public school construction, as well as prevailing wage issues.

Mr. Eng moved, seconded by Dave Johnson, to include the amendment to paragraph 3 within section 39.10.300, "Design build procedure -- Uses," with the CPARB's next legislative package. Motion carried.

UW Husky Stadium Method Evaluation Report - Olivia Yang

Ms. Yang reported labor's perspective was incorporated into the evaluation report. The PowerPoint presentation was integrated into an executive summary. The report also includes meeting minutes, write-ups, and descriptions. The UW is ready to submit the report to the Legislature as requested.

Chair Maruska asked Ms. Yang to summarize the evaluation report, recommendations, and follow up activities. Ms. Yang reported the task force used the Husky Stadium RFP as the framework for the discussion. The task force developed model characteristics, compared the characteristics with other procurement methods, and listed pros and cons of the stadium/developer concept from each stakeholder's perspective. The task force reached two conclusions:

- Data from the completed Husky Stadium will be gleaned to inform future recommendations.
- Establish a task force to evaluate an integrated project delivery (IPD) method, which appears to mirror the delivery method proposed for the stadium.

Ms. Yang said she and Mr. Kommers and Mr. Strong are prepared to initiate the task force to evaluate IPD, an alternate procurement model not currently authorized in statute.

In response to a request from Representative Haigh, Mr. Kommers provided an overview of the IPD delivery methodology. He described how it differs from the GC/CM model. Ms. Yang added that an overarching advantage is all parties involving the architect, contractor, subcontractors, owner are at the table working together at the beginning of a project.

Representative Haigh spoke on the importance of a public process and no "back room" deals. Mr. Kommers agreed it's a challenge. The goal is developing projects effectively with taxpayer money.

Discussion followed on qualification based selection with a price component, which is similar to the GC/CM process and that the private sector, such as hospitals, is testing the IPD model.

Mr. Absher arrived at the meeting.

Chair Maruska asked whether the task force plans to monitor the stadium. Ms. Yang advised that the task force did not discuss monitoring the stadium. Chair Maruska recommended establishing a smaller task force to monitor the stadium. It was mentioned that the Board established a task force to research the IPD methodology.

Mr. Eng suggested that the UW complete the same data collection forms for the completed Husky Stadium for analysis. Chair Maruska said the task force is evaluating only the delivery method and not collecting and/or analyzing the data.

Representative Haigh suggested contacting universities or colleges about grad students interested in completing a report if more in-depth data analysis is needed. Ms. Yang said the stadium didn't get funded. Speaking on behalf of higher education, she indicated she's not sure of the next step.

Mr. Kommers said it might be a good idea to revisit the task force issue in the fall. Mr. Benson, Ms. Yang, and Mr. Strong could provide a status report at a future meeting. Mr. Strong is leading the task force. Mr. Kommers said he anticipates the task force meeting over the summer to develop a definition for IPD.

Mr. Eng moved, seconded by Mr. Johnson, to approve the UW Husky Stadium method evaluation report.

Ms. Deakins said she'd like an opportunity to review the evaluation report, which was available on May 12, 2009, prior to posting it on the website and distributing it to members. The intent was to provide the report to the Legislature during the 2009 session. At a prior meeting, the Board approved forwarding the evaluation report to the Legislature following final edits.

Mr. Eng and Mr. Johnson withdrew the motion.

Ms. Yang said she'll work with Ms. Deakins to address gaps in the report. The evaluation report will be posted online June 1, 2009 with a comment period running through June 26, 2009. Ms. Deakins advised that if substantial comments are received, staff will bring the report to the CPARB for review at the July meeting.

Representative Haigh asked for copies of the evaluation report to be provided to the State Capital Budget Committee.

The Board generally agreed to forward the evaluation report if the CPARB does not meet in July and no major concerns are received from members.

Priorities and Budget for Board
Chair Maruska reviewed a 2009-2011 budget matrix and assumptions:

- Adjust the CPARB's meeting on a quarterly basis with some adjustments for drafting and finalizing legislative priorities.
- A contingency is established for two extra meetings within the current biennium.
- The PRC will meet bimonthly beginning in July. The PRC could meet less often in the event that no project and/or certification applications are submitted for approval.

Ms. Deakins reviewed staffing assumptions based on quarterly CPARB meetings and bimonthly PRC meetings. Staff to support data collection activities is also included in the assumptions.

Chair Maruska reported the next CPARB meeting is tentatively scheduled for October. Most members have waived reimbursement. He noted reimbursement needs are different for members traveling from eastern Washington. Refreshments have been reduced to coffee. Notices will be advertised in *The Olympian* and *Daily Journal of Commerce* only.

Ms. Deakins mentioned that advertising to recruit CPARB or PRC members is not captured in the estimated costs.

Discussion followed about the $118,240 allocated for data analysis over the biennium. Chair Maruska said the Board could discuss expectations with the Joint Legislative Audit and Review Commission (JLARC) because funds were reallocated from other budgeted line items. One suggestion is submitting a supplemental budget request based on JLARC's expectations and enabling the Board to reallocate those funds to other line items. The data analysis was never a projected expenditure under previous CPARB budgets.

Representative Haigh said she'll discuss the data analysis expenditure with JLARC and the idea of requesting a supplemental budget to analyze the data.

Chair Maruska reviewed the Board's reporting and data analysis responsibilities to JLARC.

In response to questions from Representative Haigh, Ms. Deakins reported the CPARB was initially created without a budget component. GA provided funding for the first year. Subsequently, the Board was funded within GA's budget. Mr. Maruska added there is no line item for the CPARB within GA's budget.

Members discussed a meeting schedule for the remainder of 2009. Mr. Absher suggested moving the October meeting to September and schedule meetings in November and December 2009. He proposed moving the April 2010 meeting to February 2010.

Mr. Absher moved, seconded by Mr. Lynch, to establish September, November and December 2009, and February and May 2010 as future CPARB meeting dates. Motion carried.

Members discussed timing and options to analyze data, such as a university professor conducting an analysis over the summer of 2010 or hiring a consultant. Representative Haigh shared that the Washington State Institute for Public Policy also undertakes research and data analysis.

Members shared their thoughts on other priorities for the Board:

- Cleaning up the reporting process, information around certified minority and women businesses, outreach efforts by contractors, and implementing conclusions identified by the task force.
- Developing recommendations for the IPD delivery.

A list of priorities previously established for 2009 were reviewed:

- The issue concerning housing authorities has been resolved based on an AG legal opinion. Public housing authorities are "public bodies" as defined in RCW 39.10.210(12) and are subject to the provisions of RCW 39.10.
- Negotiate with low bidder, best value (BV) contracting, and competitive negotiation are still open.

Mr. Lynch said BV is an issue that could be incorporated within the IPD topic. The CPARB is obligated by statute to address competitive negotiation.

- The Mike M. Johnson issue was determined to be a low priority.

Ms. Yang suggested a framework for developing a list of priorities based on concepts. The CPARB could collectively identify problem areas and develop solutions as a team. The discussion could also inform ranking priorities for consideration.

Discussion ensued on how each construction interest developed its own priority list in the past. Mr. Eng suggested that each interest represented on the Board should caucus and propose an updated priority list for review at the September meeting. Members generally agreed with the approach.

Mr. Absher suggested the IPD and BV task force employ Ms. Yang's strategy for researching new alternate forms of procurement.

Representative Haigh asked if two or three members could provide a presentation to the Capital Projects House and Senate Committees to raise awareness and help them understand construction industry issues.

Mr. Absher moved, seconded by Mr. Johnson, to entertain a two-phased approach of having the interest groups sharing priorities with the Board and a broad task force evaluating alternate delivery methods on a parallel track. Motion carried.

Boardmembers agreed to broaden the scope of the IPD task force to include BV. Because a task force meeting could result in a quorum of the CPARB, it was decided to publish IPD/BV task force meetings as Board meetings. It was noted that Mr. Strong and Mr. Lynch could co-chair the IPD/BV task force.

Mr. Lynch said he'll notify members of the IPD/BV meeting date(s).

Ms. Deakins suggested soliciting interest from others wishing to attend.

Ms. Yang proposed scheduling an IPD/BV task force meeting in June.

Set Next Meeting Agenda

- Invite KCDA representatives to provide a presentation at the September meeting
- Reports from interest groups concerning priorities
- Task force status reports
- Develop guidelines for the PRC for DBOM

Chair Maruska reported that Ms. Yang volunteered to lead developing guidelines for the PRC for DBOM. She indicated a draft report will be prepared for the September meeting for discussion purposes.

Adjournment

With there being no further business, Chair Maruska adjourned the meeting at 12:20 p.m.

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Robert Maruska, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services