

CPARB DECISION ISSUES for February 8, 2007

1. SHB 1506/SB 5489 Hearing(s) and Status of Substitute Bill

- **February 2, 2007, House State Government & Tribal Affairs Committee 100% Signed in PRO for the bill. Some pro testimony expressed concerns:**
AGC – Wants \$10 million threshold for GC/CM
CPARB chose to not take any action.

UW – Wants 3 year limit on DBOM removed and some way to use DBOM in next 6 years (see proposed language **and motion** in item 2.b. below)

Parks – Wants to be able to use JOC through GA (if not direct authority)
Motion carried to modify language to allow Parks to use JOC through GA, 7-0.

Counties – Reexamine DB threshold for road **& utility** projects **and demonstration projects**
Motion carried to put on CPARB agenda to consider for 2008 session, 7-0.

- **February 6, 2007, Substitute House Bill Passed, 8 I's, 0 Nay, 1 excused**
- **Companion Bill SB 5489 (Senate Govt Operations & Elections Committee)**
Public hearing: Monday, Feb. 12th, 10:00 a.m.

2. Proposed Changes to HB 1506 (or may need to amend Senate bill)

- a. **Section 104 –Project Review Committee** provisions proposed by King County & Nora Huey (Adds to Section 104)
Motion carried for CPARB to address these three issues during the development of the Project Review Committee procedures, 7-0.

- (a) **Removal of Committee Member for Conflict of Interest.** A provision allowing a public owner to request the removal of a committee member if the owner demonstrates some bias or conflict of interest.

Proposed language: A public owner may challenge the appointment of a member for the project review committee established to review either the certification or recertification of that public owner or review and approve

the use of design-build or general contractor/construction manager for that public owner's project. To challenge the appointment of a committee member, the public owner must identify the facts and circumstances evidencing a conflict of interest and such challenge must be presented to the chair or vice-chair of the committee no later than 15 days before the project review meeting. Upon receipt of a timely presented written challenge, the member shall not serve on committee matters relating to the certification or recertification of that public owner or the review and approval of the use of design-build or general contractor/construction manager for that public owner's project.

(b) **Public Process for Development of Committee Procedures.**

Proposed language: The board shall establish a public process for (a) the development of the review committee procedures for reviewing projects and certification applications, and (b) the development of evaluation criteria. This process shall ensure an opportunity for all interested parties to participate and provide comment on the procedures and criteria.

(c) **Effectiveness of the Review Committee.** A provision requiring CPARB to evaluate the effectiveness of the Review Committee, how it is functioning, timeliness, ease of use, and overall value of the process. Depending on the outcome of the review, opportunities for improvement should be evaluated and implemented.

Proposed language: Three years after formation of the project review committee, the board shall evaluate the effectiveness of the project review committee, how well the committee is functioning, timeliness of reviews and identify any problem areas. The board shall solicit comments from public owners and the contracting community, identify areas for improvement, and implement appropriate changes to the project review committee process.

b. **Sec 201 - DBOM** (From Ed Kommers & UW)

Motion for CPARB to address DBOM before 2008 session carried without opposition.

(4) Except for utility projects and demonstration projects for design-build-operate-maintain, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years.

Add new paragraph:

(5) Demonstration Projects for Design Build Operate Maintain. For design-build projects authorized under this section, public bodies may procure

operation and maintenance services as a part of the design-build procedure subject to the following conditions:

- (a) The Design Build Project must be approved by the Project Review Committee or be performed by a public body certified to use design-build. **Demonstration DBOM projects may only be proposed by certified public owners.**
- (b) The procurement procedure for operation and maintenance services proposed by the public body must receive approval from the Project Review Committee. CPARB shall develop procurement procedure guidelines for operation and maintenance services.
- (c) The Project Review Committee shall not approve more than two demonstration projects using the design-build-operate -maintain procedure.

c. Section 303- Contract Award (From UW)

(5) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, **site investigations**, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

Motion carried for CPARB to put on agenda for considering for next session.

d. Section 304-Maximum Allowable Construction Cost ((1) From Dan Absher and (2) & (3) from UW)

(1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost **shall may only** be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete. **Dan Absher withdrew proposal.**

(2) Major bid packages may be bid in accordance with Section 305 of this act, **with the approval of the public body**, before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid. **UW withdrew proposal.**

(3) The public body may, at its option, authorize the general contractor/construction manager to proceed with the bidding, ~~and award of,~~ **and commencement of construction of any** bid packages before receipt of complete **project** plans and specifications. Any contracts awarded under this subsection shall be incorporated in the negotiated maximum allowable construction cost.

Motion carried to accept clarification language and include in amendment, 7-0.

e. **Section 503** (How to deal with current projects that carry over)

Motion carried to replace Sec. 503 with Option 2 with the word “only” deleted.

Current language in SHB 1506: Projects using the design-build or GC/CM contracting procedures in which advertising for selection of a contractor has begun by the effective date of this section but no contract has been awarded may proceed without seeking approval of the committee under the processes in sections 107 and 108 of this act.

Option 1 (Nora Huey) **replace with:** The provisions set forth within this act shall only apply to projects advertised after July 1, 2007.

Option 2 (Nora Huey): Projects using design-build or GCCM contracting procedures in which advertising for selection of a contractor has begun ~~by the effective date of this section but no contract has been awarded may proceed without seeking approval of the committee under the processes in sections 107 and 108 of this act.~~ but a contract that has not been executed by June 30, 2007, may proceed under the statutes in effect on the date of advertising the request for proposals and/or request for qualifications or a public body may elect to utilize some or all of the provisions of this act.

Option 3 (Nancy Deakins): Projects using the design-build or GC/CM contracting procedures in which advertising for selection of a ~~contractor~~ design-build firm or general contractor/construction manager has begun by the effective date of this section but no contract has been awarded may proceed without seeking approval of the committee under the processes in sections 107 and 108 of this act.

3. **HB 2009 Trench Excavation** (State Govt & Tribal Affairs Committee)

No public hearing scheduled yet.

No companion bill in Senate yet.

Send letter to Committee chair requesting hearing.

4. **HB 2010 Responsible Bidder** (State Govt & Tribal Affairs Committee)
SB 5856 (Labor, Commerce, Research & Development Committee)
No public hearings scheduled yet. **Feb. 23rd**.
John, Nora, and Dave to testify.

Proposed amendment(s) from Industry-Wide Subcommittee carried by CPARB unanimously, including proposing the word confirmation in 4th item to leg. staff.

- **Section 1 (2) change to read:** “Contract” means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid or ~~“contract” also means~~ a contract awarded under the small works roster process in RCW 39.04.155.
- **Section 2 (2) add to the end of the sentence,** “which the bidder must meet.”
- **Section 2 (2)(d) change to read:** If the state or municipality determines a bidder ~~a bidder is determined~~ to be not responsible, ...
- **Section 3 replace with:** “A public works contractor must verify responsibility criteria for each first tier subcontractor and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include [confirmation?] that each subcontractor at the time of subcontract execution meets the responsibility criteria listed in section 2(1) of this act and possesses an electrical contractor license, if required by Chapter 19.28 RCW, or an elevator contractor license, if required by Chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract or every tier.”

5. Other Bills of Interest

- **HB 1765 Changing provisions concerning limitation of claims under a construction contract.** (Michael M. Johnson claims case) (Judiciary Committee)
Public hearing: Fri., Feb. 9th, 8:00 a.m., John L. O’Brien Bldg, Hearing Rm A
Motion to ask for CPARB to have the opportunity to address for 2008 did not pass 4 to 3.
- **Dan Absher/AGC**
 - **SB 5047 Contractor Registration Bond Increases** (Labor, Commerce, R&D Committee) No public hearing scheduled yet.
No action. Discussion about Industry-wide Subcommittee to prioritize.

- **HB 1908 – Prevailing Wage Application to Out of State Work on Pre-Fabricated Elements (Commerce & Labor Committee)**
Public hearing: Fri., Feb. 16th, 1:30 p.m., John L. O’Brien Bldg
No action.

- **John Lynch**

- **HB 1898 Providing apprenticeship utilization requirements for school district public works projects (Commerce & Labor Committee)**
Public hearing: Fri., Feb. 16th, 1:30 p.m., John L. O’Brien Bldg
No action.

- **HB 1919 Providing apprenticeship utilization requirements for port district public works projects (Commerce & Labor Committee).**
Public hearing: Fri., Feb. 16th, 1:30 p.m., John L. O’Brien Bldg
Only ports of Seattle and Tacoma. No action.
Correction 2/13/07 – Affects ports of Everett, Seattle, Tacoma, Vancouver, and Walla Walla.

6. Jim Anderson’s Issues during Public Comment today:

- **Opportunity for other public bodies to use JOC**
- **Change subcontracting percentage for JOC back to 80%**
Motion carried to consider in the next year.
- **Address apparent disconnect to encourage women and minority businesses participation compared to other goals**

7. Next meeting agenda

Plan Project Review Committee

Determine issues for subcommittee(s) to address (send issues to Nancy)

Data Collection – next steps

GC/CM Training in May