

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

1500 Jefferson – Presentation Room

Olympia, Washington

November 10, 2016

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Steven Crawford	School Districts	Vacant	Senate (R)
Santosh Kuruvilla	Engineers	Rep. Hans Dunshee	House (D)
Lawrence Coleman (Alternate)	OMWBE	Senator Bob Hasegawa	Senate (D)
Robert Maruska	Washington Ports	Lee Newgent	Const. Trades Industry
Alan Nygaard	Higher Education	Greg Fuller	Specialty Contractors
Gary Rowe	Counties	Joaquin Hernandez	Private Industry
Walter Schacht	Architects	Ty Heim	Public Hospital Districts
Janet Knoblach (Alternate)	State Government	Rep. Vincent Buys	House (R)
Rebecca Keith	Cities		
Andrew Thompson (V. Chair)	General Contractors		
Charles Horn	Insurance/Surety Industry		
Irene Reyes	Private Industry		
Mark Riker	Construction Trades Labor		
Brent LeVander	General Contractors		
Scott Middleton (Alternate)	Specialty Contractors		

STAFF & GUESTS are listed on the last page

Welcome & Introductions

Vice Chair Andrew Thompson called the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:16 a.m.

A meeting quorum was not attained.

Everyone present provided self-introduction.

Vice Chair Thompson recessed the meeting at 8:18 a.m. until a meeting quorum could be established.

Mark Riker arrived at 8:25 a.m.

Charles Horn arrived at 8:30 a.m.

A meeting quorum was attained.

Vice Chair Thompson reconvened the meeting at 8:30 a.m.

Approve Agenda - Action

Alan Nygaard moved, seconded by Robert Maruska, to approve the agenda as published. Motion carried unanimously.

Approve September 8, 2016 Meeting Minutes – Action

The following changes were requested to the minutes:

- On page 6, within the ninth paragraph, change “Alan Thompson” to reflect “Andrew Thompson.”
- On page 9, within the seventh paragraph, delete “Representative Vincent Buys” and add “Rebecca Keith” as members voting.
- On page 7, within the sixth paragraph, change “Table 100” to reflect “Tabor 100”.
- On page 15, within the fourth paragraph, revise the fifth sentence to reflect, “Should the trestle fail, the failure could create a national security issue.”

Alan Nygaard moved, seconded by Santosh Kuruvilla, to approve the minutes of September 8, 2016 as amended. Motion carried unanimously.

Public Comments

Vice Chair Thompson encouraged public comments throughout the meeting.

Project Review Committee - Recruitment Plan – Information

Nancy Deakins, DES, reported 13 PRC positions are scheduled to expire next year. Staff was asked to publish the recruitment sooner to enable organizations adequate time to recruit applicants. Staff developed a proposed outline of a recruitment plan for next year. A recruitment notice was published on the website and in the local Daily Journal of Commerce with a due date for applications of January 25, 2017. Applicants for positions expiring early in 2017 would be invited to attend and present their respective qualifications at the Board's meeting in February followed by another series of presentations for the remaining positions at the Board's May meeting. A second recruitment is planned in March for those positions not selected in February.

DES is also scheduling training for new PRC members next summer.

Walter Schacht arrived.

Alan Nygaard inquired about receiving a copy of the PRC position listing. Ms. Deakins referred to information contained within the staff report identifying the 13 positions. A complete list of PRC members is also available on the website. Ms. Deakins offered to provide members with a list of members denoting term of service.

Irene Reyes arrived.

Santosh Kuruvilla asked whether the composition of PRC membership is pre-determined or open for discussion. Ms. Deakins said position types were previously determined by the Board. The PRC was established by statute and reflects CPARB's membership composition. The recruitment list includes the following positions:

- | | |
|--------------------------------|-------------------------------------|
| 1 – Construction Manager | 1 – Design Industry – Architect |
| 1 – Design Industry – Engineer | 2 – Minority/Women Owned Businesses |
| 1 – Owner Counties | 2 – Owner Higher Education |
| 1 – Owner Public Hospitals | 1 – Owner School Districts |
| 1 – Owner State – DES | 2 – Specialty/Subcontractor |

Robert Maruska asked whether the total recruitment is for 13 appointments. Talia Baker, DES, affirmed the total number of appointments include 13 positions. It was noted that most positions expire at the end of May, June, and August. The intent was to include appointment action across several meetings because of the number of positions. Mr. Maruska said his concern surrounds early appointments, as it is important to afford sufficient notice time for incumbents and other candidates. Ms. Deakins commented that the Board could consider extending the time for public noticing and schedule appointments in May during an extended meeting.

Steve Crawford asked whether appointment of several CPARB positions is scheduled in February 2017. Ms. Deakins advised that the CPARB appointment action is a separate process through the Governor's Office.

Ms. Deakins responded to questions about the public notice and due date for applications. The recruitment notice stipulates the CPARB will review letters of interest during the February 9, 2017 meeting and at subsequent meetings until positions are filled. Those dates could be revised if the Board prefers conducting interviews only at the May meeting.

Rebecca Keith advocated for conducting interviews over several meetings to avoid the entire meeting agenda dedicated to interviews and appointments. She inquired about the possibility of staggering the deadlines for positions expiring later in the year to avoid a large number of appointment actions at the February meeting. Ms. Deakins said the intent for the

February meeting was to include action for no more than six appointments and limiting the discussion to an hour. The Board has the option to schedule all appointments during an afternoon session at the May meeting.

Vice Chair Thompson noted the intent of the recruitment plan was to improve the method for allocating time for candidates at future meetings. The Board could consider changing the process during its next meeting in December. The intent was also to expand the notification to reach an expanded pool of candidates throughout the state. It also might be possible to enable candidates to participate by teleconference.

Mr. Kuruvilla recommended staggering appointments between the February and May meetings.

Gary Rowe asked whether candidates could apply for different positions. Mr. Maruska advised that as long as the candidate is qualified for more than one type of position, there is no prohibition for the applicant to apply for multiple positions, which has occurred in the past. He suggested the Board should consider designating the six positions for consideration during the February meeting, and for multiple positions openings, the recruitment could be split for appointments in February and in May.

Mr. Crawford noted the recruitment schedule includes a second noticing period to enable two different submittal periods. Ms. Deakins clarified that the second recruitment would only be for those positions not filled in February. Mr. Rowe said the second recruitment as outlined is not intended to solicit applications from candidates who have not previously submitted applications. As he understands the recruitment, any candidate interested in any of the positions, must submit an application by January 25, which is the cut-off for all submittals. Ms. Deakins indicated that the proposed draft recruitment plan anticipated a second recruitment. Mr. Rowe inquired about the purpose of the January 25 deadline. Ms. Deakins said the January deadline is only for the first recruitment. Mr. Rowe suggested considering owner position candidates in one meeting and non-owner positions at the second meeting.

Mr. Crawford emphasized the importance of selecting specific positions for each recruitment effort to ensure fairness for applicants.

Vice Chair Thompson said the process for the PRC appointment process consumes time, which is why the recruitment was drafted to identify a specific process. He asked for feedback to move forward with the recruitment, clarify the second date for submittals, and consider the necessity of scheduling a second meeting to consider PRC candidates.

Mr. Crawford responded that the Board should clearly identify which position submittals are due for the February and May meetings, and defer to the Chair and Vice Chair as to the need to schedule a separate meeting based on other scheduled agenda topics. If needed, the Chair and Vice Chair could schedule a special meeting.

Ms. Keith agreed with Mr. Crawford's suggestion and added that the expiration date for each position should be the determining factor for the positions considered in February and in May.

Mr. Crawford pointed out the conversation surrounding the need for a special meeting has not been addressed. Although, it would be an additional meeting, it would afford an opportunity to review all applications during one meeting. The last time the Board considered applicants, several applicants applied for two different positions. Mr. Nygaard commented that his suggestion was deferring that decision to the Chair and Vice Chair based on the Board's workload at that time.

Irene Reyes said she believes the Board should consider its priorities of expiring positions and allocation of time to review applications.

Vice Chair Thompson summarized the Board's direction to staff to clarify the recruitment announcement with the Chair and Vice Chair determining the need for a special meeting.

Walter Schacht and Irene Reyes provided self-introduction.

ECCM/MCCM Committee Report – Information/Action

Ed Kommers, Chair, ECCM/MCCM Committee, reported the Board appointed the committee to review concerns about ECCM/MCCM provisions in [RCW 39.10.385](#). The goals of the committee included a review of the process, development of a procurement process, and recommendation for any changes to RCW 39.10.385. The committee met six times. The meetings included attendance from numerous stakeholders representing the industry. The committee held productive conversations about reviewing and exchanging anecdotes about the ease of the process with ample time to share concerns and listen to concerns by other stakeholders representing public bodies and GC/CMs. Everyone participating learned a great deal about the process and how it is used. Initially, members attempted to develop a procurement process. He had envisioned that the committee would have been able to develop some statutory best practice RFP for ECCM and MCCM. However, the committee was unsuccessful. Over time, it might have been possible; however, because of numerous alternatives, it was impossible to identify best practice. He suggested backing away, and, as an alternative, the committee recommended including some principles identified by the Mechanical Contractors Association of Western Washington (MCAWW) as a starting point in terms of fairness of RFPs. The information was presented to the committee as a set of principles. The committee did not adopt all MCAWW principles, but did adopt many and revised several. The principles outlined in the pre-read are the ones the committee unanimously supports as principles that are good or best practices in the RFP process of ECCM and MCCM. The committee recommends the Board adopt the principles for posting as a white paper with no statutory authority but serving as a guideline. Committee members will continue to attend legislative hearings and promote the principles.

The second goal was to recommend legislative changes. Although several changes were discussed by stakeholders, no changes were presented. MCAWW is working on a legislative proposal. Any options for changes came late in the process resulting in no recommended changes. The legislative proposal centered on the concerns surrounding the protest process, \$3 million contract requirement before triggering the use of the process, as well as a hearing requirement, which should be either eliminated or changed.

Mr. Kommers advised that the committee's recommendation is to conclude the committee's activities and adopt the principles as recommended.

Vice Chair Thompson asked about the possibility of posting the results of the committee's work similar to postings of other task force efforts. Mr. Kommers said the report was prepared in a format conducive for posting. The committee recommends posting the information under reports, guidelines, and accomplishments. Ms. Deakins affirmed DES is updating the information with current information and including a reference page.

Mr. Maruska referred to the section on principles for alternative subcontractor selection process and requested clarification about the bidding requirement under a GC/CM and whether the intent is having a low bid that is Design-Bid-Build outside of the GC/CM procurement. Mr. Kommers said the intent is utilizing one of the processes within GC/CM, which could be the low bid with or without the eligibility standard.

Mr. Nygaard asked whether the same section denoting items of "a" through "h" represent scoring factors for the selection process. Mr. Kommers said the concern was that the public bodies and GC/CM were not satisfactorily demonstrating why an ECCM/MCCM should be used other than the two processes were codified in statute. Section "a" through "h" was intended to point out factors that would be helpful to present to the public to demonstrate why the procurement process should be used as opposed to others.

Mr. Rowe said the statute includes a requirement for the public body to conduct a public hearing when using alternative subcontractor selection. He asked whether the RFP would restate the findings of the public hearing process or whether the process is a substitute for the public hearing process. Mr. Kommers said the public hearing is an open opportunity to evaluate the justification for the alternatives, as well as affording an opportunity for the public to comment on weights and criteria. Often, the RFP is the vehicle by which the public body or the GC/CM justifies using the method, which is open for comment at the hearing. The RFP often includes a justification for using the process. It has been a practice rather than

a requirement. As an alternative, the GC/CM could include the justification in a separate document provided at the public hearing with the RFP excluding that portion. The guidance could be used as a reference for the public hearing process or included within the RFP.

Mr. Kommers offered to review the Board's comments for possible clarifications of the process for the Board's action in December.

Mr. Maruska asked for clarification as to whether the pre-read is intended to become the posting. Mr. Kommers advised that the pre-read would serve as the posted report. Rather than just posting the principles, the committee agreed it to provide some background. The information provides some clarification on the committee's goals.

Mr. Kuruvilla asked for additional information about the committee's discussion for any recommended changes to RCW 39.10.385. Mr. Kommers reported the committee reviewed the question of what might need to be changed in statute at each meeting. One of the discussion points was whether the \$3 million floor should be eliminated as a requirement in the statute. The committee discussed the issue. MCAWW opposes any change in the statute. No proposal was ever presented during the committee meetings. The second issue surrounds ongoing issues about the hearing and concerns by public bodies and GC/CMs that the public hearing takes time and entails an extra step. However, the public hearing is the only opportunity to demonstrate fairness to an entity awarded the project. Committee members and stakeholders find the hearing process to be extremely valuable to express concerns on behalf of proposers without jeopardizing their relationship with a potential client. The committee was advised that MCAWW would oppose any effort to remove the hearing requirement. Subsequently, at the next committee meeting, no proposal was submitted.

Finally, in too many cases, the MCAWW believes it is important to exercise protest aspects of the proposal that are unfair. In many cases, the MCAWW believes there are cavalier approaches to protests by GC/CMs or public bodies. Although the committee provided good feedback, the proposal was never considered for action because of the lack of time to vet the proposal. The language is under development with the stakeholder list used to solicit feedback.

Mr. Crawford referred to provisions for a fair and transparent interview process and that the information should include names and/or roles of all interview panelists. Although he has encountered situations under both scenarios with and without names, he is curious about the committee's discussion with respect to the proposed requirement. Mr. Kommers said the concerns were valid and is why the recommendation includes names and/or roles of the panelists. Should the names not be identified, the public and the proposers should at least know the roles of the panelists. Mr. Crawford suggested revising item 1 a. under the Principles for Alternative Subcontractor Selection Process to state, "*a. The project risks that this procurement process should mitigate.*" Mr. Kommers replied that the committee discussed the recommendation and suggested substituting "*address*" rather than "*fix*."

Walter Schacht referred for the first proposed provision that indicates the RFP provides an understanding of the considerations that were used to select an ECCM/MCCM and questioned why it would not be a required submittal for the hearing. As explained, by practice, many agencies have the RFP ready for the hearing but it is not a requirement. The opportunity to talk about whether the selection process was appropriately applied would be during the hearing. He asked why the questions would not be addressed during the hearing. Mr. Kommers responded that inherently, the requirement at the hearing has several moving parts and that it is not necessary to reiterate those requirements, as the hearing is an opportunity for interested parties to comment on the use of this process whether published or not because it affords an opportunity to exercise that right. Often, the hearing agenda does not include an opportunity, which is often pointed out to the attendees at the hearing in terms of how there is an opportunity to talk about how this process needs to be justified. Secondly, weights and criteria must be provided prior to the hearing for comment. Although it has been stated that the RFP does not have to be required, he would like to go back in time as one of the co-authors of the statute and change it because the RFP in its total, should be provided because many times there is minimal information. It is important interested parties are able to comment on the justification for using the process. It could be a separate document or a separate process, or it could be part of the RFP. If the procuring party wants to make it a separate document and the RFP

extends beyond, there is no objection. However, the point is that the use of the process has to be justified other than acknowledging that it is a good bid.

Mr. Schacht said the issue of transparency is approached differently by agencies because some agencies reveal panelist names but will not reveal who submitted and who is being interviewed while other agencies will not reveal information on the panelists. Statewide, there is a closely held community of agencies, design professionals, and contractors. Some people in any competition for any procurement method will be aware of who is involved. He suggested that transparency for agencies should acknowledge that some people always know some of the information and that revealing only the roles might protect people from receiving phone calls, but it is also possible to state the intent of not crossing the line by contacting panelists. Should panelists continue to receive contact, the applicant should be automatically disqualified. It should also extend to the submitter of the RFP and who is attending the interview because some of the information is already known by half of the competitors. A level playing field and real transparency by enabling everyone to have access to the information would be preferable.

Mr. Kuruvilla asked about the possibility of posting some samples of inputs the committee believes are inappropriate to help inform agencies as to the issues. Mr. Kommers said the committee discussed providing a library of samples; however, no one could agree on the best samples because there is no perfect model. The committee believed that it was inherent for entities to identify the process that works specific to their needs.

Lawrence Coleman asked whether the committee considered utilizing small, minority, and women-owned businesses and developing some principles for those specific entities. Mr. Kommers replied [RCW 39.10.385](#) addresses outreach to minority and women-owned businesses. No efforts by the committee were established to formalize best practices on how to best utilize that selection criteria. The committee's efforts focused more about the use of the process and the selection.

Ms. Deakins pointed out that the RCW includes requirements for selection of proposals to include the firm's plan for outreach to minority and women-owned businesses. Mr. Kommers added that there were no elements to provide the best way to address those principles.

Vice Chair Thompson said there have been a number of suggestions to post the information and defer action to the December meeting. Mr. Kommers said the next step would include editing the document based on the comments by the Board and review the proposed changes with committee members for posting as a pre-read for the December meeting.

Mr. Kommers offered a public comment rather than speaking on behalf of the committee. MCAWW and other specialty associations including the National Electrical Contractors Association remain concerned about the fairness of 39.10.385 and its application and questionable benefits to taxpayers. While some reforms might fix the problems, it might entail an action removing the statute. When the statute was created, the goal for all parties was understanding the fair procurement doctrine and working together. However, over time, a big division occurred with departures of what once was a fair process. The school districts are part of that process. Stakeholders participating may disagree about best practices or the activities. However, they have been serious about fixing the issues while other entities pay no attention and appear to create their own rules with very innovative interpretations of the statute. It is becoming very alarming to members in terms of the process. He is unsure of the next steps, but one of the ideas under consideration by MCAWW is working on protest procedures to compel a body to respond to the protest because the industry is witnessing a very cavalier dismissal of protests. The association would like legislation to compel more articulate responses to line items of concern. MCAWW plans to introduce legislation during the 2017 legislative session with the proposal submitted to CPARB at its December meeting.

Mr. Maruska expressed appreciation for the transparency and honesty of the thoughts shared with the Board. While a number of challenges in the application of ECCM/MCCM exist, he questioned whether there have been any benefits or whether there is an inherent flaw in using ECCM/MCCM. Mr. Kommers responded that there have been procurements, which were either out-of-box or procurements that contacted the association early and responded favorably to constructive comments during the hearing process by revising the RFP process to what the association believes was a fairer package.

The association has definitely witnessed positive results from the comments. Secondly, in terms of the benefit, he is uncertain if the process benefits the taxpayer. It would be difficult to find data to answer the question as it likely would entail relying on anecdotal data because all projects are different. As to whether the statute should be eliminated for enabling the technique, it is the question and dilemma the association is contending with as some members are unsatisfied and would like to eliminate the statute while other members prefer changes to the statute. As an association, he and Mr. Middleton have to separate sore losers from those with legitimate concerns because in any procurement process, there is a winner and many losers. The association is currently creating a database of ECCM/MCCM projects to calculate whether only a few mechanical contractors receive the work. A similar discussion occurred during the initiation of GC/CM, which indicated that only a few were receiving the work. The same discussion is occurring and it is becoming a self-fulfilling prophecy for only a select group of mechanical contractors. The association has not concluded the project as data gathering is ongoing for projects using ECCM or MCCM. Because he worked with many CPARB members to promote the passage of the statute, he is proceeding carefully in the next steps concerning the statute.

Ms. Keith questioned why the principles did not include the concerns about the approach to protests during the selection process. Mr. Kommers advised that the issue was submitted too late in the process. Ms. Keith asked whether it is still possible to clarify some of the issues at this time. Mr. Kommers affirmed the committee could review the request either by conference call or through balloting.

Ms. Reyes asked whether the association was able to collect data of satisfied and dissatisfied procurement contracting officers. Mr. Kommers advised that data were not collected.

Vice Chair Thompson reviewed the next step. The committee plans to present an edited report that may include a discussion surrounding protests. Mr. Kommers advised that Mr. Middleton would present the report at the December meeting.

Public Works Issues Committee – Information/Action

Mr. Maruska reported in September 2014, the Board discussed a bill introduced during the 2012 session primarily focused on small ports and small public works to provide or respond to difficulty experienced by small ports in terms of the cost to procure all public works projects. The proposed bill was introduced with feedback from a number of parties, which was reviewed by the Board. At that time, the Board established a committee to work on the small public works issue. Since the bill was first introduced, a number of issues have changed and the committee did not review or pursue the proposed legislation. At this time, the issue has lessened because of the changes in dynamics of small works with a number of bills submitted during the last session focused on simplifying and addressing some of the concerns by smaller entities.

Mr. Maruska proposed the Board consider dismissing the committee, and if necessary, reconstitute the committee when the issue requires further review.

Mr. Nygaard noted that public works is a broad category. He asked whether the proposal is to disband the committee. Mr. Maruska responded that according to the minutes of the September 14 meeting, the Board appointed a Public Works Issues Subcommittee to study small public works issues as identified and other issues that could be addressed. Should the Board believe there are others and retain the committee, he would support that action. Members of the committee included Gary Rowe, Chris Hirst, Ty Heim, Mark Riker, Vince Campanella, Greg Fuller, Charles Horn, Larry Stevens, Dan Seydel, Bill Frare, and a representative from National Association of Minority Contractors.

Robert Maruska moved, seconded by Gary Rowe, to disband the Public Works Issues Committee. Motion carried unanimously.

Public-Private Partnership Committee Feedback & Proposed Legislation – Information

James Lynch, Ahlers & Cressman, provided the update on behalf of John Ahlers, Chair, Public-Private Partnership (P3) Committee. At the last presentation, the intent was to obtain action by the Board on the draft proposal. Since the last Board meeting, the committee received feedback from numerous interests to include stakeholder interests that was not

expressly addressed. Several provisions in the draft legislation warranted further discussion and consideration, as well as legislative and financial expertise input sought by the committee. Board members submitted written comments. The committee met on October 13, 2016, to discuss the written feedback. During the meeting, more participation occurred by many to include architectural, engineering, legislative, and financial expertise. Members discussed large and smaller issues and all were addressed to include honorariums, unsolicited proposals (*addressed in the legislation*), whether new legislation could interact with existing Design-Build-Operate-Maintain, and whether it was possible to move the new legislation as a subset or address how the two might work in harmony. Members discussed the financing element and how P3 legislation could interact with 6320 financing or bond financing and debt limitations. Members agreed to follow up with treasury staff to ensure those elements were addressed properly. The final major topic related to more specific standards for the PRC to review as it would entail a new procurement methodology and would likely be used for large projects. The committee believes there is some wisdom in defining the subset of PRC review for P3 projects and that membership should have particular P3 expertise. The committee defined what the group would consider in approving or disapproving project proposals.

Following the committee meeting, several members met with Representative Buys and legislative staff member Steve Masse, who provided some valuable feedback that should be considered prior to returning to the Board with the proposal for action. One example pertained to a pre-procurement hearing. The committee also discussed the option of rollout pilot projects or other methods for introducing projects to track lessons learned and adjust legislation as needed. Committee members plan to address ideas at the next meeting.

The committee plans to reconvene a meeting at the end of November to consider final decisions on issues that have been addressed. Dependent upon whether it is possible to develop a revised draft of the legislation to the Board by December, the Board will be asked to consider action. The timing might be optimistic; however there is consensus by the committee that the legislation is important and that all input from stakeholders has been included prior to the Board's action. Another component not impacting legislation directly is a request for pros and cons, and lessons learned nationally and internationally. The committee intends to present the final legislation with a discussion on other successful projects, challenges, and how the proposed legislation addresses those challenges.

Mr. Maruska referred to the discussion on how the statutes would work together. He asked if a member has been assigned to follow through with that issue. Mr. Lynch said he has been tasked to follow through and plans to propose an edit for the committee's consideration.

Mr. Schacht reported he was able to attend the committee meeting along with other Board members. The meeting was productive. It is likely that he, as well as others on the Board, do not necessarily have a complete understanding of P3. Attendance at the meeting to afford questions and discussing the pros and cons was helpful. It would be very helpful for the Board to receive similar information shared during the committee meeting to help members understand the structure. He asked about the honorarium and asked whether the recommendation includes an honorarium as a required element of the P3 submittal. Mr. Lynch said the committee discussed honorariums with a broad understanding that an honorarium is best practice and in most cases, should be in place to incentivize the process and encourage participation. Current draft legislation includes an honorarium as an option as there might be situations where the honorarium should be lower or excluded. It remains an open issue requiring a final action. Mr. Schacht offered that the general issue of honorariums for competitive procurements bears some discussion by the Board in terms of best practices and whether practices are living up to the intent of the RCWs.

Mr. Schacht reported on his efforts to recruit an architect to serve on the P3 Committee. Recently, he identified a potential member who is willing to serve. He introduced Brian Zeallear with NBBJ. Mr. Zeallear has professional working experience working on P3s in the states, Canada and the United Kingdom.

Walter Schacht moved, seconded by Mr. Maruska, to nominate and appoint Brian Zeallear to serve on the Public-Private Partnership Committee. Motion carried unanimously.

Mr. Maruska asked whether the committee initiated a review of the proposed legislation with the Code Reviser's Office. Mr. Lynch said that at the last committee meeting, the intent was to contact legislative staff and the Code Reviser, and seek public financial expertise. During the meeting with legislative staff, it was clear that some of the changes proposed by the committee should be finalized prior to reviewing the draft again with legislative staff followed by a review with the Code Reviser. The committee plans to finalize the draft to ensure all issues have been addressed and review the draft with legislative staff and the Code Reviser prior to presenting the draft to the Board.

Ms. Keith asked whether the meeting with Mr. Masse spoke to whether the proposal should be a new statute or a revision to existing statutes. Mr. Lynch responded that Mr. Masse was advised that the committee discussed the issue. Ms. Keith asked whether the questions for additional committee consideration would be available in time for the Board's December meeting. Apparently, Mr. Masse offered some questions for additional committee consideration. Mr. Lynch advised that the agenda for the next meeting includes a discussion on those questions.

Vice Chair Thompson suggested that for the purpose of sharing information prior to the committee meeting, committee leadership should consider summarizing and distributing the questions to invoke discussion prior to the meeting. Additionally, Washington State Department of Transportation is represented on the committee.

Don LaFord, Construction Management Association of America (CMAA), said current legislation dictates that the Public Private Partnership (P3) Committee must include individuals with expertise in the field of public policy, public finance, management consulting, engineering or architecture design, construction public-private partnerships and public works law. CMAA is requesting that in addition, construction managers should be listed as a separate entity because when referring to management consulting, most people consider facilities staff managing facilities rather than construction managers. Construction managers have an extensive amount of experience in P3 projects and would contribute much to the committee.

Vice Chair Thompson encouraged Mr. La Ford to attend the next P3 committee meeting.

Frank Lemos, President, National Minority Business Advisory Council, said his understanding of P3 is minimal, but the concern of the policy is how it affects minority business participation. Governor Inslee was recently re-elected for another four years and has specifically outlined goals for certified women, minority, and veterans. He asked that the Board consider those goals as the Board's goals. Additionally, Speaker Chopp is not a P3 fan and in other meetings of community groups and the Council, if P3 legislation moves forward, support will be necessary. Nationally, there are P3 programs that have been helpful to disadvantaged businesses, but at this point, no one has talked about those impacts. It is incumbent upon the Board and the committee to direct focus to disadvantaged businesses because leveraging the minority business community advocacy would help the House. He asked that the committee address the request. He would also like to know whether the committee has explored inclusion at the national level.

Mr. Lynch acknowledged the comments as valuable. Since the inception of the committee, it was a priority of the committee and was recognized as one of the key benefits for the methodology because it affords a way to increase participation and outreach. The process enables more direct outreach and more participation in instances where pricing might otherwise preclude such participation. Provisions are included in the draft legislation.

Vice Chair Thompson added that the white paper includes particular terms, and equity is front and center and is part of the vernacular of the statute. There is a focus today within the state, as well as awareness for inclusion, social equity, and opportunity.

Ms. Reyes noted that the report indicates that the owner may designate standards for equity. She recommended changing "may" to "must." She asked for additional information on government oversight. Mr. Lynch replied that the answer is two-fold. The process anticipates including professionals with the expertise when the final legislation is presented to review pros and cons. Oversight varies between each jurisdiction with some jurisdictions having a special P3 body with

full staffing and management of P3 projects while most jurisdictions take advantage of P3 as another alternative procurement process where safeguards are implemented upfront with various degrees of reporting to an oversight body.

Ms. Reyes asked about the average percentage paid by government to public-private partnerships for risk and how projects are typically funded in the U.S., such as the use of tolls. Mr. Lynch said he is unfamiliar with the statistics, and encouraged Ms. Reyes to submit the question to receive a response. The legislation, as drafted, includes various funding scenarios where some projects do not generate any revenue to the concessionaire while other projects would generate sufficient funds to pay for the project. P3 projects can entail a full spectrum of different project revenues.

Vice Chair Thompson addressed some of the conflicts and acknowledged that public owners are seeking flexibility as each owner administers contracts differently. He understands the intent to create or include language that addresses all concerns while he continues to receive feedback from owners that they are trying to ensure they can pursue the procurement method most effective for the agency within a public forum.

Mr. Lynch cited some examples of P3 projects the committee reviewed. The preconception of a P3 project is a major toll road, which is one extreme. However, another example is an owner of a remote parcel of land who had contemplated development for years but was not interested in pursuing a traditional procurement methodology. The legislation could provide a vehicle to serve as a “*set it and forget it*” process where the owner can hire someone to design, build, operate, maintain, and run the project for a specified number of years. The contractor would then return the property at the conclusion of the contract while providing a public benefit during the contract period without much effort by the owner.

Bob Armstead, National Association of Minority Contractors, commented that the lack of uniformity in terms of responsibility and oversight, and allowing each public owner to have different processes, procedures, and requirements substantially hurts the minority community. Subsequently, the minority community does not support the language.

Mr. Nygaard shared that he attended the committee meeting. He expressed appreciation for the hard work and effort by Mr. Ahlers and Mr. Lynch in steering the efforts of the committee. Both individuals are steering the proposal in the right direction and obtaining input that has been advantageous for the legislative proposal to proceed in a positive manner.

Mr. Lynch noted that presenting the legislation to the Board triggered much more participation that has provided value and increased the momentum to develop good legislation.

Ms. Keith commented on the concerns about the language stipulating that the owner may designate standards because the draft legislation states that every public-private agreement shall otherwise ensure the adequate provision is made for outreach to small business entities, disadvantaged business entities, veteran-owned, minority, women-owned, and other underutilized businesses.

Vice Chair Thompson recommended the committee could clarify the language.

Vice Chair Thompson recessed the meeting for a break from 10:20 a.m. to 10:36 a.m.

Upcoming Legislation – Information

Vice Chair Thompson invited comments on proposed legislation.

Frank Lemos, President, National Minority Business Advisory Council, reported that the two bills supported by the Board last year involving the small works roster and limited works roster generated some concerns by the Department of Labor and Industries (L&I). During conversations with DES staff, language was revised to appease the concerns of L&I. He is unsure of the status of the language; however, the bills are important to the disadvantaged community. He urged the Board’s support as he believes the concerns by L&I have been addressed. The small works roster limit was at \$500,000 for project retainage and limited works increased to \$150,000 to allow agencies to waive bonding requirements.

Ms. Deakins agreed the December meeting would be timely to discuss how the Board wants to address the upcoming session. DES staff could provide a listing of bills that were carried forward.

Mr. Maruska pointed out that bills from the last session must be reintroduced and are not automatically rolled forward.

Mr. Lemos affirmed he would provide the bill to Ms. Deakins.

Mr. Rowe noted that the legislation was HB 2722 from the prior session.

Mark Riker reported Labor has significant concerns about both bills and has not reviewed the updated language. He plans to review it with Labor representatives and provide comments in December.

Mr. Maruska said he believes the bills were DES requested legislation and were presented to the Board for endorsement. If the language was changed since the Board's endorsement, it is likely the Board would need to reconsider the bill.

Janet Knoblach, DES, reported that Mr. Frare worked on some revisions to the legislation; however, the draft is not at a point to share with the Board at this time. She does not believe any of the thresholds were changed.

Mr. Maruska said the Board identified several bills for the upcoming session. The minutes from the September 8 meeting indicate that the Board discussed a 90-day period for agency renewal notification followed by a motion directing the PRC Chair and Vice Chair to draft language to change statute to address the 90-day requirement for the Board's consideration in November.

Ms. Deakins said she believes the proposed legislation would be presented in December.

Mr. Maruska added that the Board also discussed some administrative changes to language in 39.10 that should be forwarded to the Board as well. He suggested reviewing the minutes to identify the proposed changes and timing. Ms. Deakins said she would review other potential changes with Mr. Frare.

Brent LeVander requested inclusion of legislation on the December meeting agenda. The legislation is sponsored by the Association of General Contractors (AGC) for change notification language as it relates to the Michael Johnson decision. He affirmed providing the draft to staff by December 1 for inclusion as a pre-read.

Mark Riker left the meeting.

New Committee Proposal: High Performance on Design-Bid-Build – Information

Janet Knoblach briefed the Board on the proposal to establish a High Performance Criteria on Design-Bid-Build Committee. The committee would address performance criteria on Design-Bid-Build projects. The proposal was prompted by [2EHB1115 \[Section 1096\]](#). The request is to consider establishing the committee and potential appointees to the committee for action at the December meeting. The committee's goal is "*Make recommendations to improve the design-bid-build project delivery method to include high performance criteria with incentives for the designers and contractors meeting the performance measures.*"

Mr. LeVander asked for an example of high performance criteria within Design-Bid-Build. Ms. Knoblach replied that the requested example is the basis of the proposal to determine whether it is feasible and how it could be achieved.

Mr. Maruska inquired as to whether the request is to establish a committee and lead the response to Section 1096, or whether the request is for CPARB to identify representatives to participate on a DES committee. Ms. Knoblach advised that she believes the first option is the objective.

Phil Lovell questioned whether the request pertains to a performance measurement or performance measurements, and whether other measurements are in place or yet to be established. Ms. Knoblach advised that the measurements would need to be established.

Mr. Rowe said he assumes that 1096 is a requirement included in the capital budget. He asked whether there is a deadline. Ms. Knoblach advised that there is no formal deadline other than DES would like to conclude the process no later than June 2017. The proposal is to form a committee to examine the possibilities.

Nancy Johns, OSPI, asked whether the suggestion pertaining to high performance criteria for Design-Bid-Build is different from [RCW 39.35D](#), which is the high performance building requirements for all state-funded projects. Ms. Knoblach said DES is examining whether there is a way to use the criteria and include incentives to Design-Bid-Build projects. Ms. Johns noted that RCW 39.35D is not performance criteria but is very prescriptive in nature. She was hoping that the proposal would change the RCW in a way that might move it to a more performance-based standard. Ms. Knoblach advised that the issue is not a part of the request.

Mr. Schacht admitted culpability in terms of the proposal. During the last full legislative session, he was a member of a group of architects from the American Architects Washington Council who approached the Chair of the Capital Budget Committee, Representative Dunshee, about the issue of high performance buildings and project delivery because Representative Dunshee believed that Design-Build contracting by its nature is a performance guaranteed contract, and that the path to the future for high performance buildings was through Design-Build. He also believed that there were means to achieve high performance. There is a track record of success with GC/CM or Design-Bid-Build achieving LEED silver, gold, and platinum through conventional procurement methods. He also does not believe the intent of the measure was to change performance measures, but rather possibly incentivizing behavior. Only a few examples are available whereby the incentives resulted in shared savings. A utility in Oregon offered an incentive to the owner to reduce electrical energy. The project was Design-Bid-Build.

Vice Chair Thompson asked whether Mr. Schacht's prior work on lifecycle costs could correlate with the request in terms of base lining and developing incentives. Mr. Schacht said the committee would lead direction in terms of what it would consider. The issue is whether Design-Build is the only procurement method that can incentivize behavior through creation of penalties or assignment of benefits.

Mr. Lovell cited the language italicized in the proposal stating, *"It must include, at a minimum methods to incorporate more architectural and engineering firms and contractors to be eligible for design build projects, and methods for including high performance criteria with incentives for the architectural and engineering firm and contractor to meet the performance measure in design-bid-build project delivery methods."* In theory, the first part of the sentence could end at the comma. Additionally, the proposal directs the committee to look for methods for including high performance criteria with incentives for the architectural and engineering firm and contractor to meet the performance measures in design-bid-build delivery projects, which to him is a different study and process, as it has nothing to do with high performance buildings.

Ms. Deakins advised that DES is treating the first part of the sentence differently, as the Design-Build Best Practices Committee is addressing the first clause and the proposed committee would address the second clause.

Mr. Lovell said a second aspect is creating service performance or project performance criteria for Design-Bid-Build projects to include incentives for the architect and the contractor to achieve high performance in the management of the project. Ms. Knoblach affirmed his interpretation as correct.

Mr. Maruska recommended defining a mission for the committee and identifying concise goals for the committee based on past practice by the Board as it helps the committee focus on its mission. He suggested identifying expectations of committee members and participants to ensure everyone understands the intent from the onset. Vice Chair Thompson agreed specificity that the mission is important and speaks to best practices.

Mr. Maruska said it is also the intent that this CPARB committee would provide recommendations to DES with DES rendering the final decisions for next steps.

Vice Chair Thompson said the proposal would be included on the December meeting agenda as an action item.

Data Collection Schedule Update – Information

Ms. Deakins referred members to an updated schedule for CPARB Data Collection. The previous schedule identified the draft for presentation to the Board during the November meeting with an opportunity to comment. However, during discussions with the Washington Technology Agency, staff learned that because the University of Washington is hosting a system collecting data owned by DES, the system design must be reviewed by the Office of the Chief Information Officer, which could entail several months to ensure the system meets all security requirements for data. Staff is anticipating presenting more information in February for initiating the system in May.

Mr. Nygaard provided some historical information on the process. DES had transitioned through several internal resources for creation of the database and learned that the database would be at significant cost (\$300,000). At that point, options were discussed about the University of Washington potentially creating a database for DES. The University determined the cost to be approximately \$50,000. The security issue could impact and increase the budget. Although protecting the process and data from corruption is important, the data is public and available to anyone. University staff plan to review the criteria to determine if there are any issues.

Vice Chair Thompson spoke to the possibility of speaking to the Office of the Chief Information Officer and explaining that security is not an issue as the information is public to help advance the process. Mr. Nygaard explained that the University recently received criteria and he has not had the chance to formalize a response.

Mr. Maruska offered consideration to consider a legislative change for data collection to enable another agency to solve the issue. Today, the interpretation is that data is owned by DES and perhaps a legislative change could change that designation. Ms. Deakins affirmed initial discussions need to be scheduled with the Office of the Chief Information Officer, as it is unlikely the office is aware of the type of data.

Vice Chair Thompson cited the importance of data collection for the Board. Today, two disparity studies are underway. The data collection process could support those efforts significantly and the Board should do its best to move the data collection process forward to support the study efforts.

Mr. Nygaard added that the University is ready but only recently received the security criteria. He wants to avoid setting expectations if the data collection method changes.

Several members offered suggestions on specific ways staff should approach the request to the Office of the Chief Information Officer.

Mr. Maruska reminded the Board to consider its workload if the issue is deferred to February.

Ms. Deakins reported on Job Order Contracting (JOC) data collection for CPARB. She offered to send a schedule to members. Staff revised the format for data collection to prevent users from changing formulas in the data fields. The new format was sent out in October to public owners and JOC users. The first data collection covers 2014 through 2015. A meeting is scheduled with JOC users to receive feedback on the form. The first report is due in January for the first year reporting. The second year's new format will be released after the November meeting with any revisions to the format. For the second year reporting, the report is due in February with both reports presented to the Board in May.

Mr. Maruska asked whether the Board changed the due dates for the reports. Ms. Deakins reported the statute directs public bodies to report annually with the legislation changing the year from the contract year to July 1 through June 30 for reporting.

Vice Chair Thompson recommended identifying agenda topics for the February meeting between now and the December meeting to assist the Board with scheduling agenda topics.

Recruitment for Board (5 Positions) – Information

Ms. Deakins reported on the CPARB positions expiring next year. Members serve a four-year term and are appointed by the Governor. Members with expiring terms include Andrew Thompson, Charles Horn, Alan Nygaard, Greg Fuller, and Rebecca Keith. The Governor's Office has been contacted. The Governor's Office indicated the recruitment process would be initiated several months prior to the terms expiring. Recruitment includes following up with current members to ascertain interest in continuing to serve. Members should submit an application 30 days prior to the end of the term. All members with expiring terms have only served one term. The Governor's policy is to limit the terms to no more than two terms or 10 years.

Mr. Maruska advised members who do not plan to reapply to notify staff of their intent to assist staff in recruitment efforts.

Ms. Deakins responded to questions about serving after expiration of the term if the Governor has not appointed a replacement or reappointed the member. Members are eligible to continue serving until reappointed or a new appointment occurs.

Set Agenda Items for December Meeting

Vice Chair Thompson reviewed agenda items for the December 8 meeting:

- PRC Chair/Vice Chair Public Owner Recertification 90-day Report
- ECCM/MCCM Committee Follow-up and Action
- Public-Private Partnership Committee Legislative Proposal - Action
- Upcoming Legislation to include AGC Legislative Proposal
- New Committee Proposal: High Performance Design-Bid-Build - Action
- PRC Report – September and December Meetings
- Data Collection Update
- Recruitment Discussion
- Work Plan for CPARB 2017

Mr. Kuruvilla offered a suggestion to invite representatives from the City of Seattle, Sound Transit, or Washington State Department of Transportation to present lessons learned and share best practices for P3 projects. Each meeting agenda could include one presentation with Sound Transit scheduled as the first presenter.

Vice Chair Thompson said he would recommend discussing the recommendation with the Chair.

Ms. Deakins noted that Chair Frare expressed interest in including a discussion on a Work Plan for 2017 during the December meeting. Vice Chair Thompson suggested Mr. Kuruvilla's recommendation could be included as part of the Work Plan discussion.

Discussion ensued on the Work Plan for 2017 and advance research or discussion with public agencies/contractors to ascertain interest in providing presentations to the Board.

Mr. Armstead reported that since the Board approves all alternative delivery processes, as some point the Board should know what it is approving and what the agencies are doing. The suggestion affords an opportunity to provide some of that knowledge to the Board.

Mr. Crawford said that during a future discussion, the Board might consider the PRC's role and that it could include some focus towards lessons learned as part of the PRC report.

Vice Chair Thompson encouraged members to attend a PRC meeting, as the process is very deliberative and members ask many difficult questions of the project sponsors.

Mr. Schacht expressed support for the spirit of Mr. Kuruvilla's proposal but cautioned that presentations could ultimately end up as an advertisement as to how the agency was able to complete a great project. Alternatively, one annual meeting could be organized as a symposium with multiple presentations and an informed panel discussion.

Mr. Kuruvilla offered a third alternative of surveying information that the Board should know about, such as drafting a survey questionnaire and sending it to some targeted agencies to help inform the Work Plan for next year.

Mr. Crawford said the issue relates to data collection as the format could be modified to obtain additional information the Board might desire.

Ms. Keith commented that if public agencies are finding that from lessons learned that there are problems in the process, it would be incumbent on each member to bring those issues to the Board. She does not understand why the Board's structure would not be receptive to that feedback.

Ms. Deakins attributed some of the issue to the lack of data collection. Post project team reports from the data collection effort may serve and inform the Board of any improvements that may be required to the statute.

Mr. Lemos reminded the Board that the Board has the following powers and duties under [RCW 39.10.230](#):

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts.

The Board is obligated to do what is being asked.

Vice Chair Thompson said the agenda for the next meeting would include a Work Session to discuss the request to determine next steps moving forward.

Adjournment

Robert Maruska moved, seconded by Santosh Kuruvilla, to adjourn the meeting at 11:52 p.m. Motion carried unanimously.

Staff & Guests

Bob Armstead, NAMC

Talia Baker, DES

Thomas Carver, OSPI

Nancy Deakins, DES

Valerie Gow, Puget Sound Meeting Services

Sheina Hughes, Stantec

Nancy Johns, OSPI

Ed Kommers, MCAWW

H Donald LaFord, CMAA

Frank Lemos, National Minority Business Advocacy Council

Phil Lovell, Citizen

Dick Lutz, Centennial Construction

James Lynch, Ahlers & Cressman

Scott Middleton, MCAWW

Paul Parker, Transportation Commission

Brian Zealle, NBBJ

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