

CAPITAL PROJECTS ADVISORY REVIEW BOARD

REAUTHORIZATION COMMITTEE

MINUTES - DRAFT

Wednesday, July 1, 2020 1:00 – 3:00 pm

Meeting Location: WebEx Meeting

Chair: Rebecca Keith (WA Cities)

Vice-Chair: Robynne Thaxton (Private Industry)

Members: Loren Armstrong (WA Ports), Becky Blankenship (Architects), Neil Hartman (WA Building Trades), Janet Jansen (DES), Robin Heinrichs (School Districts), Howard Hillinger (Construction Managers), Santosh Kuruville (Engineers), Scott Middleton (Specialty Contractors), Eric Nordstrom (Counties), Mike Pellitteri (General Contractors), Linneth Riley-Hall (Transit), Olivia Yang (Higher Ed)

Guests: Jesse Gilliam (City of Seattle), Bill Dobyms (PRC, General Contractors), Nancy Deakins (DES), Steve Goldblatt (Resolve Disputes), Ed Peters (PRC, Schools), Walter Schacht (CPARB, Architects), Dan Seydel (Platinum Business), Kyle Twohig (PRC, Cities), Louise Sweeney (WSU), Vikki Stocker (KBA Construction Management), Melissa Van Gorkom (Research Analyst, WA State Legislature), Kurt Boyd (PRC, Specialty Subs)

Committee Task: Achieve reauthorization of RCW 39.10

PRE-READ: Proposed Statute Changes Current 6/11/2020 with focus on PRC provisions

1:00 *Rebecca: Welcome and Introduction*
Meeting called to order at 1:02 pm.

Approve agenda
SCOTT: Notes that reference to RCW 39.10.350(3) for the PRC agenda topic should be corrected to 39.10.250 (3).

DECISION: Robynne moves to approve the agenda with correction. Scott seconds. All in favor. None opposed.

Approve meeting minutes from June 11, 2020

DECISION: Robynne moves to approve the minutes with Attachment 1. Janet seconds. All in favor. None opposed.

1:15 *PRC Discussion*
Intro – Rebecca and Scott

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Discussion Topics:

- *RCW 39.10.250 (3) – PRC feedback on implementation*
- *Has PRC had any challenges carrying out its duties based on statute provisions?*
- *How does PRC interpret and implement the conflict of interest provision in RCW 39.10.240 (4)?*

REBECCA:

- Reauthorization committee has been meeting to discuss reauthorization.
- There are a number of questions that would be valuable to have PRCs input; including ECCM/GCCM, other questions.
- We are having you here today because we believe it will be valuable to discuss these topics with PRC before finalizing recommendations.
- There needs to be a draft bill in September/October so we are far along the process, but it is important to check in.

SCOTT:

- MCA has significant concerns about how .385 is being implemented.
- Last year MCA presented to CPARB. GCCM committee also met 15 times to discuss procurement concerns, also met with reauthorization committee and offline
- After all these meetings there was unanimous approval to make changes that include expanding .385 to all subtrades.
- MCA's concerns are focused around public owners that are not certified that may only use the process every 5-10 years.
- Initial proposals included:
 - School districts cannot use process
 - Limit to certified only
- Committee ultimately agreed non-certified owners could use requirements but with assurance that these owners are aware of the law. The best way to do that is by public owner to go to PRC and present plan on how to administer .385 and get approval to use that process.
- This especially important now that language is open for all subtrades to meet that dollar threshold.
- Presenting to PRC does not mean public owners are required to use .385, it just makes them eligible.
- Creates space to go back later to decide to use .385.
- Language on table satisfies MCA and gets PRC review and approval to use .385.

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KYLE: Is the expectation an agency may get GCCM approval and then come back to the PRC to use .385?

SCOTT: An agency could either get approval upfront or down the road.

KYLE: How would it work logistically to re-apply?

SCOTT:

- Committee was focused on statute. PRC would have overview of logistics, by-laws, policy.
- MCA does not anticipate the process would be as rigorous as applying for GCCM.

KYLE: Notes PRC will have to develop this process, suggests the process be virtual. Guesses owners will all want to get .385 approval upfront.

REBECCA: Decision was to keep upfront or after GCCM involvement to offer flexibility, but agrees functionally more owners will want to get approval upfront.

SCOTT: It is tough to get into this level of detail with legislation. Giving this authority to PRC is the best strategy.

LOREN: If there are unsophisticated owners with a GCCM on board, how realistic is it that a shift to ECCM or MCCM would happen? Contracts would have to be modified.

ROBYNNE:

- In practice, contracts can always be modified.
- The PRC would have to create a new form that would talk about ECCM or MCCM which would alert owners of this delivery method.
- PRC members could approve/disapprove projects to address concerns with unsophisticated owners.

KYLE: Concern is more with regards to the contract - will that impact the procurement stage?

SCOTT: With GCCM using mechanical subcontracting, could you use low-bid or .385? To use .385, you would then advise moving forward to the PRC.

REBECCA: Summarizes:

- Process implementation will be at the PRC level, not the statute level.

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KYLE: This is a lift for the PRC that might not be used, but if that's what we need to do that is what we need to do.

BILL: The public agency hires the GCCM to make the best decision to use/not use this layer of subcontracting. Why do we want to add another layer of approval?

SCOTT:

- We have already had this discussion and made these decisions over two years.
- There was a case where a public body did not know GCCM was being used on a public project.
- Committee determined it is in the best interest of the public for the PRC to determine that the public agency knows what they are doing for this.

MIKE:

- Agrees this has been deeply discussed over the past 16 months.
- GCCM committee agrees with this process.

SCOTT:

- There have been many examples with no public notification, other processes that are not fair and transparent.
- Pre-approval helps with education component.

MIKE:

- Approval of expanding to other trades was in exchange for listening to and addressing concerns other contractors have had.

REBECCA:

- Agrees there were many discussions with multiple stakeholders involved.
- Has heard from PRC that members were asking during committees about this process.
- From conversation today, wants PRC input on how it would be implemented.

OLIVIA:

- Heart of the matter: Owner is ready to take on alternative procurement.
- Owners has read the RCW from front to end.
- Ideal is to get everything in on the front end to get subs on board.
- Issue is to get authority to do so; not sure why someone would do this on a piecemeal basis.

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LOREN: This feels like poor legislation writing to him.

REBECCA: Notes the RA committee voted for this change.

MIKE:

- Committee points out again and again that public owners are not savvy.
- This is not about contractors that know what they are doing.
- If they have not started this far out, they should have to come back and explain the process.

OLIVIA:

- Most agree we wish the legislation did not have to be so prescriptive.
- Laws in general are a reaction to when something bad happens.
- If PRC is successful in helping owners be ready and we are all accountable to each other, there might be another step.
- Notes that this decision is a result of negotiations over the past 12-16 months.

REBECCA:

- PRC members on the phone, we wanted to share why this was important and get your further implementation thoughts.
- During PRC meetings, do members ask applicants if they are considering using .385?

ED: Yes, I have heard members ask that question.

KURT: Yes, I have asked that question. Wants to assess what command of the RCW.

HOWARD:

- This has been brought up but as time is limited this has not been extensively followed up on.
- It can be hard for public owner to commit as it is the GCCM's contract.
- This will be helpful to get owner's understanding of requirements.

REBECCA: Any other issues we would like the PRC committee to be aware of?

DAN: As a former member of PRC there was one question I was never able to ask, but does not want to take us off course.

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HOWARD: Would like to hear from other PRC members if PRC members feel there should be specific authorities for PRC to ask applicants who have been approved to report on their progress.

LINNETH: Does not need legislative authority to do this as when public owners come back to PRC for project the PRC asks on status of lessons learned.

HOWARD: What about independent of the public owner coming back? Does the PRC have the authority to ask? CPARB does, maybe CPARB could delegate.

KURT: Agrees there are times when projects move in different directions than when originally approved. It would be good to uncover why this has changed from original certification.

ROBYNNE:

- In statute there is the ability to decertify an owner. There is not authority to call back an owner with a project approval.
- Problem with doing that is it may be considered a quasi-judicial issue; taking away authority after bond approval, etc. may have legal issues.
- The remedy for this issue is filing a protest.
- Concerns would be budget limitations and legal process.

LOREN: Again, this is a bad way to legislate a problem that comes up infrequently.

MIKE: What about when there is staff turnover?

ROBYNNE: If there are a certified public agency, PRC can call back and take away certification.

REBECCA: Do not believe PRC can cancel an existing contract.

LINNETH:

- In past she has contacted owners to advise them of the legislation.
- She has offered technical assistance from Sound Transit.
- Some have also filed complaints with CPARB.

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ED: All public agencies are always asked about their audit findings. If acting in violation of what agreed to do it is something that could be revealed in an audit.

REBECCA: Is it common practice for a PRC chair to call owners to advise them of the legislation?

LINNETH: Noted she did it because it was past practice.

KURT: States that owners look out for each other and reach out when there is something not happening correctly. Is not sure when something is a response to a complaint.

ED: In last year has seen a number of agencies pose a question to the chair about if something is possible.

KURT: Has received similar questions.

LINNETH: Has given advice outside of being chair. Agencies put us all at risk by not following RCWs.

HOWARD:

- As CPARB has reporting in statute, they could delegate or give PRC authority.
- Does note there are some agencies that don't want feedback once approved.
- Not sure there is a need for legislative change.

REBECCA:

- Would like to continue this discussion at a later time in her authority as chair.
- Asks if we would like to continue for another meeting.

ED: Would like another chance to discuss as few colleagues have weighed in.

ROBYNNE:

- Notes time to make changes to committee are way out.
- Would like to revisit this post reauthorization.
- Cautions using this authority for any reason.

REBECCA:

- Points out not needed for reauthorization.

KYLE:

- Many non-legislative opportunities to check in on this issue.

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SCOTT:

- MC would be happy to weigh in on the implementation of this issue.
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2:26

Schedule Review and Legislative Update – Rebecca

REBECCA: In final stretch for reauthorization so must be focused in moving forward.

2:25

Design Build Statute:

- *Pre-engineered Metal Building Presentation – Walter*
- *WSU Pilot Project Updated Proposal – Olivia*

WALTER:

- Acknowledges contentious nature of previous conversation.
- Notes the importance of PRC review.
- Shares a presentation on what pre-engineered metal buildings looks like.
- Since 2017 there have been four solicitations for PEMB that do not comply with the requirements of 39.10.
- It's not ideal to find out through a solicitation that something does not comply, it would be better to uncover this process through the PRC.
- Shows PEMB that have site-assembled components
- Highlights RFQ for a PEMB without several key requirements

BECKY:

- Shared with architect's organizations, noted that the concern is to make sure owners truly understand the statute so it is fair to architects pursuing these projects.
- As key stakeholders, architects would like this change to be included in reauthorization.
- If not in reauthorization architects will advocate for this change in the next legislative session.

REBECCA:

- Coming around to considering it may make sense to delete pre-engineered metal buildings.

JANET:

- As an architect, concern is – have we contacted the PEMB industry?
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SCOTT:

- Supports removing PEMB. Not being used for what it is intended to be used for.
- Position is to remove, if there is pushback we can cross that bridge when we get to it.

REBECCA:

- Any substantive objections?

LOREN:

- Did the projects end in failures? Are we fixing a problem that did not go well or are we fixing a potential problem only?

WALTER:

- Statute does not align with your question.

ROBYNNE:

- No opposition with removing exemption.
- Concern about pushback from industry.
- Does not want to jeopardize reauthorization.
- Okay with putting it out there to see what happens.

SANTOSH: Do you see removal as only option? Or is adding definition an option?

WALTER:

- Additional research indicates no convenient way to define PEMB.
- Concerned about loopholes.

REBECCA:

- Wants to keep this with the reauthorization committee.
- Wants to dedicate more time at next meeting and take action at that meeting.

LOREN:

- Does not oppose Walter's proposal.

HOWARD:

- Concerned about very small projects – do they have to go to the PRC?

LINNETH:

- How do we address concerns?

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REBECCA:

- Concerns are about industry response, small projects, if we should create a definition

DECISION: Put this topic on the agenda for July 15.

OLIVIA:

- Proposing that WSU is the pilot to see how DB can work under \$2M.
- In DB statute, not WSU, so everything is in one place.
- Why WSU? If only WSU is doing this you know who to call/who is responsible if things go well or not.
- WSU wants to do this to be able to find different ways to help small businesses, will add provision.

REBECCA:

- Asks Olivia if she would be available for questions/additional input.

OLIVIA:

- Yes.

ROBYNNE:

- Good to get more time to digest and talk about proposal, but is fine with proposal as it sits.

2:55 Agenda Preview for Next meeting:
Proposals for RCW 39.10.490 and applicability of RCW
43.131.407 and 43.131.408

3:00 Adjourn

NEXT MEETING JULY 15, 2020 – 1:00 – 3:00 PM

Meeting Link on CPARB Website and Meeting Invite or

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You can also dial 173.243.2.68 and enter your meeting number.

Meeting number (access code): 146 213 4861

Meeting password: zM5VjHKsQ69

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