

Capital Projects Advisory Review Board
Project Feedback Process Workgroup

Meeting Notes 1/18/2024 - Amended

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Committee Members: (14 members, 8 = Quorum)

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| X Dave Johnson <i>Co-Chair</i> , General Contractors | X Art McCluskey, Owner General Public |
| X Jeff Gonzalez, <i>Co-Chair</i> , Owners State
Kurt Boyd, Specialty Subcontractors | X Karen Mooseker, School Districts |
| X Marvin Doster, General Contractors
Lekha Fernandes, OMWBE | X Mike Pellitteri, Specialty Subcontractors |
| Bobby Forch, Jr., Disadvantaged Businesses | X Irene Reyes, Private Industry |
| Thomas Golden, Design Industry-Architects | X Linneth Riley Hall, General Owner |
| | X Robynne Thaxton, Private Industry |
| | X Olivia Yang, Higher Ed |

Guests:

Talia Baker, DES Staff
Colleen Newell, MFA

Co-Chair Dave Johnson called the meeting to order at 11:12 a.m. A quorum was established.

1) Review and approve agenda - Action

Co-Chair Johnson reviewed the agenda and asked the group for any edits before proceeding.

Marvin Doster moved, seconded by Mike Pellitteri, to approve the agenda. The motion was approved by a voice vote.

2) Approve minutes from 11/16/2023 – Action

Co-Chair Johnson asked the group for any edits to the meeting minutes from November 16, 2023.

Robynne Thaxton moved, seconded by Marvin Doster, to approve the meeting minutes. The motion was approved by a voice vote.

3) Define “Issue” – Discussion\Action

- a) During the last meeting, this committee spent time going over various issues that have come up and discussed how they may be addressed and potentially escalated. The focus of that conversation centered on how issues can be resolved at the lowest level and only escalate further if needed.
- b) After that conversation, the need arose to define what an “issue” was, and whether it was related to compliance with the statute, best practices, or the delivery method, as well as how each of those issues should be addressed. The focus of this conversation is about how this group should address or focus on various aspects of these issues.
- c) The list of issues reviewed at the last meeting provided an opportunity to help this group understand what issues have come up, as well as home in on the committee’s purpose. One aspect of that purpose is to better understand the entities that go through the PRC, the issues or problems that may arise throughout this process, and if there should be any follow up from CPARB or the PRC.
- d) In terms of what is considered an issue, one important thing to consider is whether the PRC or CPARB has the capacity to follow up in an informal way to notify an entity of a wrongdoing, beyond the informal ways that already exist. There is a need to create a process to address entities that invalidate the approval itself, rather than just the things that the PRC or CPARB may not approve of or are not best practices—neither of which are in violation of statute. These issues need to be something that invalidates the approval itself.
- e) It was noted that there may be three categories that issues fall into: 1) those that are out of line relative to getting the process approved by the PRC, 2) when someone gets approval **based on outside CM** representation and doesn’t follow through with representation, and 3) execution of a project under alternative procurement.

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4) Action once an issue is identified – Discussion

- a) It was pointed out that there is a process already in place that CPARB uses to address issues as they arise, and this has been used on several occasions. Once CPARB has learned of an entity being in violation of statute, the process includes sending a letter to said entity, which informs them of this violation. While the process has not gone past the informing step, the next step would require further action if they do not comply, but what that action entails is not known. In many cases, entities are unaware that they are in violation of statute.
- b) There was uncertainty regarding whether this process was documented or whether there were any correspondence files or records. Additionally, uncertainty was noted about whether the process was meant to be fully documented due to its informality. This is part of the reason why this committee was formed—to solidify and establish a process.
- c) It was noted that if you want to hold people accountable there needs to be documentation of the process to ensure consistency. This committee needs to come up with a process that clearly lays out the steps to address issues. Having a uniform process will help ensure that owners are not getting away with being out of compliance.
- d) There is also not a clear understanding of what is wrong amongst owners. What one owner thinks is wrong may not be the same for another owner.
- e) One suggestion for a uniform process would be to create a system that allows people to submit issues. This would entail having someone to review each submission and determine if it is an issue related to statute, best practices, etc., and then determine what next steps should be taken.
- f) While there has been no official process, traditionally the informal process has included someone bringing the issue to the CPARB or PRC chair. This issue may entail an owner that is trying to do a Design-Build project, but they did not go to the PRC for project approval. The Chair would then call that owner, notifying them that they need to come to the PRC to do this type of project. There was no record of this process happening, and DES would only know about it after the fact if there was a follow up email.
- g) Previous CPARB chairs have had various levels of attention paid to these issues, and one chair did bring forward concrete steps to address something like this. Having a process is important for ensuring consistency and helping future chairs.
- h) There are some instances in which the person(s) involved do not want to be identified, and so the question is how to ensure records are kept in these situations. Anonymity is an important consideration and be mindful of as it relates to identifying who is bringing up the issue.
- i) One important thing to note is that the Office of the Attorney General (AG) has been involved when CPARB has addressed issues with other public agencies. CPARB cannot go forth with informing another agency that they are in violation of statute without having some backup information.
- j) The question was posed about how often this type of escalation has happened and how big of a problem it is. There are at least two known issues. One of the instances involved an agency from California that was doing a project in Washington. They were sent a letter by CPARB and were unaware that they were not in compliance with statute. This process involved the AG's office and was determined to not be an issue. While there have been issues and complaints that have arisen, going through the AG's office has not happened very often.

5) Identify the escalation process – Discussion

- a) There is a need to determine when issues get elevated. Some of the issues that were discussed in the previous meeting were more just noise and not serious enough to go to the CPARB or PRC chair. These issues may entail educational things they are not aware of, and if education related to the RCW could be improved, then these would be a nonissue. The hope is to create a process that gets ahead of the issue and next steps to address it.
- b) In RCW 39.10 relating to GC/CM, the law primarily focuses on the procurement process. Because it's procurement and not a contract dispute happening outside of the statute, there is a need for a resolution. If, in a procurement process, the #1 person was awarded and the #2 person noted it was not fair, then there needs to be some sort of process to resolve this issue at the earlier level.

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- c) One example of an escalation process could include the aggrieved party (for example, the subcontractor) talking to the contractor, who then talks to the owner. If the owner indicates there has been no wrongdoing, then the next step may entail the subcontractor raising this with their association. The association then has a conversation with the contractor, owner, etc., and it is still not resolved. The final stage could entail a letter being sent to CPARB informing them that there is an issue.
- d) It was reiterated that CPARB cannot legislate bad behavior. If an issue can be identified as a procurement process rather than bad behavior, then this escalation process needs to be written down. Additionally, a parallel process needs to be set up on the PRC and the Board Development Committee may be the right committee to create this process. If the process is not resolved after CPARB and the PRC's involvement, then the AG's office may need to get involved.
- e) Creating a flow chart to identify the steps to escalate the issue may help define this process. Co-Chairs Jeff Gonzalez and Dave Johnson will begin creating a flow chart that encompasses what has been discussed in this and previous meetings.
- f) There may be different levels of escalation. The first level is notifying the PRC and the second level could entail involving CPARB. Additionally, on the project level, the process may first entail a person-to-person discussion. If that does not work, then the next step would be taking this to the PRC to address it as an informal counseling process and not the statutory level.
- g) The next step could entail PRC members who represent the two parties discussing the issue and a potential solution. If, after the project level and member to member steps do not result in a resolution, then the question is at what point is additional action or steps needed. Oftentimes, a letter will grab people's attention and may take care of the issue, and, if needed, include an opinion by the AG's office.
- h) It was noted that the PRC member to member step would likely not be on public record unless it comes up in a meeting, which would then be noted in the meeting minutes. The informal process would require no documentation. If, after the issue is not resolved at the project level and member level, it would go to CPARB who would then send a letter, which would be documented.
- i) A lot of issues stem from people not knowing or being aware of the issue. There have been discussions on how to improve or implement education, as well as establish a process and opportunities for resolution.
- j) It is important to collect what the issues are, however, it doesn't have to include information about who, what, when, or where, but rather just the type of issue. This will help establish educational materials to prevent this from happening again.
- k) Understanding the types of issues that have been discussed, there are two different parts to issues, which include bad actions by bad actors and systemic failures. These failures include instances such as slow payment, and the feedback received regarding this issue was that it had to go through different levels of approval. The RCW does not account for the various levels that payments have to go through, and therefore the time it takes.
- l) This issue has arisen related to Prompt Pay to subcontractors, and there is a committee that is addressing this. There is awareness that this is an issue, and it is currently attempting to be resolved for small businesses.
- m) One of the benefits of documenting not only the process but the complaints/issues and how they are resolved is that you are able to identify if there are repeat owners who are doing the same thing over and over. If different complaints are coming in but related to the same owner, then these issues could be addressed with the owner. Some of these things are case-by-case. You are not able to have a process for everything and not able to categorize all issues—there will be issues that have not been done before, which will have to be taken on a case-by-case basis.
- n) There may be an opportunity to utilize the CPARB webpage to get the word out that there is a process in place for reporting and addressing issues.
- o) This group was reminded that CPARB and the PRC have no authority to correct anything, except to not renew a certification or project approval. That is why it is important to ensure integrity.

6) Reporting Process – Discussion

- a) There is still a need to identify the process of how issues are collected, as well as what the trigger is for when someone needs to report. As the various levels of the process are moved through, it is also

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important to consider what documentation is needed to collect and respond to it all.

- b) Including a form on the website may be a possibility to collect issues. Oftentimes members do not have the bandwidth to do problem resolution on a daily basis. There is a need to create a process that can be minimally maintained and staffed.
- c) As Co-Chairs Johnson and Gonzalez put together the framework and flowchart, and once the issues come forth, there is a need to verify that the issues are in violation of RCW 39.10.
- d) Additionally, there needs to be consideration for how to loop back with someone to let them know that the issue has been resolved. There is a need to loop back to clarify that the issue has been resolved and how it was dealt with—to ensure transparency in the process.

7) Meeting Schedule for 2024

This workgroup discussed and agreed to keep the following meeting schedule for 2024:

Third Thursday of every month, from 11:00 a.m. – 12:30 p.m.

8) Next Meeting Agenda – Discussion

- Thursday, February 15, 11:00 a.m. – 12:30 p.m.
- Approve Agenda
- Approve Minutes from 1/18/2024
- Reporting process
 - What information is collected
 - Determination of issue
- Process for addressing/escalating issues
 - Steps to resolve, escalate, or close issues
- Next Meeting Agenda
- Adjournment

9) Action items

- a) Co-Chair Jeff Gonzalez and Co-Chair Dave Johnson to draft a flow chat that captures the process and steps identified and discussed by this group so far.
- b) Talia Baker to begin inquiring with DES communications department regarding options to embed or link a form on CPARB's website.

10) Meeting Adjourned at 12:35 p.m.

Parking lot:

- a) If there is a form that can be filled out and submitted online, and who would check the inbox and respond to issues?
- b) What is the process of closing the loop?
- c) What is the level of documentation needed as issues or complaints arise?