

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Special Meeting – Virtual Via Teams

Meeting Minutes - DRAFT

February 20 , 2024

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MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Janice Zahn (<i>Chair</i>)	Ports	Lekha Fernandes	OMWBE
Keith Michel (<i>Vice Chair</i>)	General Contractors	Senator Bob Hasegawa	Senate (D)
Corey Fedie	Public Hospital Districts	Santosh Kuruvilla	Engineers
Bobbie Forch, Jr.	Disadvantaged Business	Mark Nakagawara	Cities
Bruce Hayashi	Architects	Irene Reyes	Private Industry
Janet Jansen	State Government	Linneth Riley Hall	Transportation
Karen Mooseker	School Districts	Rep. Mike Steele	House (R)
Matt Rasmussen	Counties	Rep. Steve Tharinger	House (D)
Mark Riker	Construction Trades Labor	Senator Judy Warnick	Senate (R)
Steve Russo	Specialty Subcontractors		
John Salinas II	Specialty Contractors		
Kara Skinner	Ins./Surety Industry		
Robin Strom	General Contractors		
Josh Swanson	Construction Trades Labor		
Robynne Thaxton	Private Industry		
Olivia Yang	Higher Education		

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM

Chair Janice Zahn called the virtual special meeting of the Capital Projects Advisory Review Board (CPARB) to order at 3:30 p.m.

A roll call of members confirmed a meeting quorum.

WELCOME BOARD MEMBERS & INTRODUCTIONS

Chair Zahn welcomed everyone to the special meeting to review an appeal of a Project Review Committee (PRC) denial of a Design-Build project application submitted by Spokane Public Facilities District (SPFD) for its Arena Refresh project.

Chair Zahn acknowledged Steve Russo as a new member attending his first meeting.

BOARD MEMBERS OPENING THOUGHTS/SHARE COMMITMENTS - *Information*

Chair Zahn emphasized the importance of the Board’s shared commitments of Respect, Purpose, Listening to Understand, Accountability, and Inclusion especially because a PRC decision has not been appealed since 2017.

APPEAL HEARING FOR SPOKANE PUBLIC FACILITIES DISTRICT – *Action*

Chair Zahn referred to the appeal process established in RCW 39.10.290. The Board is limited in its review to facts and arguments presented to the Project Review Committee. The Board will consider the entire record and parts relevant to the appeal. Eleven votes are necessary either to affirm the PRC decision or overturn the decision. The vote will be conducted as a roll call vote to ensure a majority vote has been achieved. The vote is not reflective of a meeting quorum but the majority of the Board membership.

The hearing will begin with a video of the PRC presentation from the Appellant (public owner) and Q&A from the January 26, 2024, PRC meeting. The Appellant has 10 minutes to present its appeal. The Board will then deliberate. For the Board’s reference, the score sheet used by the PRC was provided to members outlining the elements within RCW 39.10 for PRC determinations on whether to approve or disapprove a project application. Following the Board’s deliberation, a motion will be entertained to either uphold or overturn the PRC decision.

The Board viewed the video of the Appellant’s project presentation to the PRC and the following Q&A discussion on January 26, 2024.

Josh Swanson joined the meeting at 4:17 p.m. during the video of the project presentation.

Chair Zahn invited the Appellant to present its appeal.

Stephanie Curran, CEO, Spokane Public Facilities District (PFD or District), thanked members for affording time to attend and for scheduling the meeting. The reason for the appeal is the scheduled replacement of retractable seating at the

arena. The seating is at the end of its life cycle and has become a safety issue. The arena must be closed to replace the seating.

The District's budget process is from September through November each year. As a public entity, the District is required to conduct two readings of the budget for their Board. The Board then votes to approve the budget at its last meeting in November. During the budget process last year, it was determined that the best time for the upgrade would be during the closure of the arena for the seating replacement project. The arena was closed from 2019 to 2021 due to COVID-19 resulting in a significant loss in revenues not only to the PFD but also to the community. The arena drives economic impact to the community through events with support to hotels, restaurants, bars, and other small businesses. The PFD turned down four concerts for the summer because of the shutdown due to the seat replacement project. Another two-year closure is not possible following the two-year closure because of the pandemic.

Agency staff met and discussed with Colin Anderson with Hill International on the possibility of pursuing a Progressive Design-Build for the project. The PFD has previous experience with Design-Build with three other venues. Following a review of RCWs, PFD staff agreed the best option for the project's delivery would be Progressive Design-Build.

During the PRC deliberation, there was discussion around the short procurement time causing a reduced outreach period for the PFD as well as an opinion that the PFD did not focus on women and minority-owned businesses. On a personal note, Ms. Curran said she is a female CEO and supports the promotion of women. Melissa Coulter is an excellent example as she was hired several years ago as an assistant, was promoted to Purchasing Manager, and is managing projects for the PFD. Ms. Curran said she is the daughter of immigrants and grew up in a small family-owned construction company. Women, minorities, and small businesses matter very much to her.

As CEO, Ms. Curran said she is also a steward of public tax dollars. It is important to complete the project as a Progressive Design-Build because it provides the best opportunity for success. The PFD believes the proposal is within the requirements of the RCW and recognizes that there is possibly a need to update the RCWs to better support women and minority-owned businesses. Another reason for appealing the decision is to be part of change for the better. At this time, the PFD believes it is in compliance. During deliberations, some members of the PRC agreed the project was in compliance. The request is to enable the project to proceed using Progressive Design-Build.

Colin Anderson, VP of Operations in Spokane with Hill International, reported that he has been assisting the PFD through the process over the last several months.

The PRC deliberation focused on two issues of a tight timeline for the Request for Qualifications (RFQ) to Statement of Qualifications (SOQ) process as well as outreach. One misperception by the PRC for clarification is the issue of preselection of teams, which did not occur. Outreach was conducted to as many people as possible on the design side, construction side, and the trade side to share information about the project. The reason for the A3, a single 11" x 17" page format, was because Washington energy updates are scheduled for release in March 2024 delaying the permitting group by six to eight weeks putting the PFD near the end of the permitting queue. It is about trying to make the schedule as short as possible. There also will be some procurement of long-lead items for the renovations, which is part of the reason for the tighter schedule, which has nothing to do with preselecting teams.

Additionally, the use of Progressive Design-Build team experience as outlined during the PRC presentation includes Hill International which currently has nine Progressive Design-Build projects in the queue. Mr. Anderson shared that he has presented many projects to the PRC. This project is a perfect example of a Progressive Design-Build as the schedule is tight, it is a renovation of a 30-year-old building concurrent with another construction project, and it is occupied. There is much complexity to the project. Quite simply, if the PFD does not make the obvious deadline, there would be a substantial loss in revenue to the community. It is not about the PFD, but it is about the hotels, restaurants, transit, and other businesses in the community.

Mr. Anderson clarified that when the PRC denied the application, he was confused about the purpose of the PRC because his understanding as well as in the AEC industry, is that the purpose of the PRC is to ensure that if alternative delivery is used, it meets the state's statutes. He understands the process is objective and not subjective. After receiving the denial, he reviewed the RCWs again and he is having difficulty in identifying how the project does not comply with the RCWs. After he reviewed RCW 39.10 280 A, he determined that using a lump sum would not work for the project as time was lacking for production of a full set of bid documents for the project. Section B speaks to project cost. The project is more than \$2 million. The project meets two of the three criteria, which was explained well. The team has extensive budget

experience as well as a flexible scope, which is perfect for Progressive Design-Build because it meets the schedule and the budget. Additionally, the PFD has no audit findings. If the PRC is set up for a different reason, it is important to share that information with the PFD because it is not identified in the RCWs. During deliberation of the PRC, those members voting against the proposal mentioned that the project complied with the RCWs but several offered subjective comments leading to the denial of the project, which confused the PFD. He asked for clarification because if the RCWs require changes to allow more subjectivity or more definitions of outreach, then the PFD supports that action; however, at this time, those factors are not in the RCWs.

Melissa Coulter, Purchasing Manager, Spokane PFD, spoke to the PRC presentation and the Q&A portion of the meeting. She presented the project's approach and outreach, which included criteria in the RFQ and RFP phases, scoring teams on their history and experience for promoting inclusiveness, and including a form to track to assist the Design-Build team. The PFD also planned to have meetings once the design builders were in place to work together on inclusivity. She also mentioned her meeting with Aleesha Roedel with Washington APEX Accelerator on the same day as it was the earliest she was able to meet based on Ms. Roedel's schedule. During the meeting, she was invited to participate on an owner panel at a small business boot camp on February 27, 2024 where she will discuss PFD projects including the arena project to help promote engagement of minority and women-owned business owners, as well as the importance of becoming certified.

During the deliberation portion of the PRC meeting, comments of, "I'm not a fan" seemed like they were just checking a box as it appeared the PRC was underwhelmed regarding the project's inclusivity approach. It felt incredibly personal as a DBIA champion and it seemed to be based on their personal feelings and not facts within the RCWs and approval criteria. As a new professional in the business, it was her understanding that working with APEX was a learning opportunity to help her learn the steps and train her on moving forward. The inclusion and plan for outreach was important to present but her lack of detail and experience should not be a large element for approval or denial because scoring criteria are not based on requiring experience. The agency's approach to inclusivity is important and well understood. If, as was said in the deliberations, the statute needs to be reevaluated to include the inclusivity approach for outreach, then that should be completed and communicated to owners moving forward. Owners are being held to a standard that is neither identified nor established, has not been communicated, and from her research, has not been a reason to rejecting other projects previously. The District's goal is to move forward with the Progressive Design-Build approach and utilize the practices as intended.

Ms. Curran thanked the Board for the opportunity to share thoughts and the agency's diligence. She looks forward to hearing the discussion.

Chair Zahn thanked the team for attending the meeting and explaining the appeal to the Board. The PFD members are welcome to listen to the Board's deliberation.

Talia Baker displayed the scorecard PRC uses.

Chair Zahn reviewed the criteria in RCW 39.10 for project approval for Design-Build. She stressed the importance of following the requirements of the RCW for alternative delivery for Design-Build. In Section A for fiscal benefit, the applicant must meet the criterion. Section B includes three subcomponents. The applicant meets the requirements if one of the subcomponents is achieved. In Section C for public body having the necessary experience, all six criteria must be achieved to pass. Section D speaks to construction personnel with knowledge. Section E speaks to resolving any audit findings relative to previous projects. Those are the five components within RCW 39.10, the applicant must satisfy to receive project approval.

Additionally, the Board's deliberation is based on a pass/fail process with no grading the project from the standpoint of whether the Appellant earned a particular score.

Chair Zahn invited discussion by the Board.

Robynne Thaxton reported she viewed the entire project presentation prior to the meeting. The score sheet does not provide all language in the statute. RCW 39.10.280 I.C. states, "The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with

experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget.”

The question is whether the project has all those issues and whether the project has the necessary experience or qualified team to carry out the alternative contracting procedure. The PFD hired Hill International as allowed by the RCW. It appears the PFD is using two professionals in different ways. The first was hiring Hill International to assist the PFD through the process and the second was seeking experience from APEX to assist the PFD in its inclusion process and procedures, which is common. Additionally, during the Q&A session, one of the PRC panelists did not appear to understand the Progressive Design-Build process. The question pertained to when the parties receive pricing from short-listed proposers. During a Progressive Design-Build process, no pricing occurs, rather, there is a cost element, which is typically the overhead and profit percentage of the design builder only with no other pricing other than later in the process. Progressive Design-Build includes selection of the design builder and the lead designer, and all other parties are selected after an award by the Design-Build team. Progressive Design-Build is the most successful delivery method in increasing diversity within the state. The numbers prove the record, as there have been extraordinary numbers of increasing diversity through Progressive Design-Build. Typically, following the procurement, the Owner and the Design-Build team work together to conduct outreach to increase diversity numbers and include the information within the guaranteed maximum price, which is not established until the team is selected. It seems that the question assumes that there would be final pricing during the procurement, which is not the case for Progressive Design-Build. Because of that issue, she does not understand how the PFD did not meet the criteria.

Ms. Baker displayed RCW 39.10.280 for the benefit of members.

Bobby Forch asked about Ms. Thaxton comments that Progressive Design-Build is the most successful delivery method in terms of inclusion and the source of data to substantiate her comment.

Ms. Thaxton responded that the data source is based on her review of dozens of projects proposals with inclusion data. There is a substantial difference in the inclusion numbers she has reviewed on projects that are traditional Design-Build or GC/CM, traditional Design-Bid-Build and Progressive Design-Build. She has not completed a study on the differences.

Mr. Forch noted that he also reviews project proposals for multiple agencies including the State of Washington, school districts, and others. He suggested a statement that speaks to Progressive Design-Build as the most effective alternative delivery method for inclusion should be supported by specific data that demonstrates those outcomes. He reviews plans from the beginning to the end, completes all oversight monitoring and tracking, and is unclear as the statement is sweeping in terms of the delivery method.

Since this is a special meeting to only consider the appeal, Chair Zahn recommended deferring this discussion as an item under new business during a regular Board meeting.

Mr. Forch cited the project’s schedule, which appears challenging in terms of equity and inclusion. It is also unclear as to what the owner has accomplished over the course of time related to the issue. He asked whether the owner has any data.

Chair Zahn questioned how the issue relates to the requirements of the RCW.

Mr. Forch replied that the schedule is the element that appears challenging to him.

Matt Rasmussen said he reviewed all the documentation. The main reason for the denial speaks to the schedule. RCW 39.10.280 (C) 4 cites one requirement for the necessary and appropriate funding and time to properly manage the job and complete the project. He questioned whether the agency has the time with staff to manage the project and whether the agency has the appropriate schedule to complete the work. The first three bulleted points from the denial letter indicates the PRC panel did not believe the agency had an appropriate schedule to complete the work and had various reasons that were discussed during the meeting. His question surrounds the likelihood that at some point there must be a subjective decision by each committee member as to whether they believe the schedule is appropriate. Some committee members did not believe the schedule was appropriate, which is why the application was denied.

Vice Chair Michel expressed appreciation of the applicant’s appeal presentation explaining several factors that provided some insight into the reality of the schedule for the project, specifically the budget fiscal year cut-off to approve a budget. The timeline did condense how much time the agency had remaining to align with a previously scheduled window of time when the facility will be closed for the seating replacement project. Recognizing that the PFD is attempting to effectively fast track a \$2.8 million interior refresh of selected spaces inside an existing facility using Progressive Design-Build as the

delivery method meets the requirements of the RCW according to the top section of the scorecard (A & B). It is his opinion, the best choice for the PFD's position and the project vision the agency is trying to create and deliver. The context that the agency offered to the Board with respect to the fiscal benefit to the community and what events at the arena contribute to neighboring businesses is a huge part of the financial fiscal benefit in terms of the timing and project scope that aligns by maximizing the benefit to the community while concurrently saving project dollars. During the PRC Q&A, the applicant responded appropriately citing scope relief as to how the agency plans to maximize what is delivered. It appears the applicant probably does not have unrealistic expectations about how far the budget will go. He also appreciated Mr. Anderson speaking to the subjective versus objective evaluation of an application. He asked whether there is sufficient time for discussion as much of the focus was on the first five days of the procurement process, which according to him, does not represent the entire procurement process. Within the applicant's appeal, representatives further explained how the agency is providing an adjusted schedule in light of the appeal. He agreed there is a short duration for applicants to propose. The A3 proposal is a one page 11" x 17" format considered as simple that can be requested as step 1 of a multiple step procurement. The agency does describe evaluation, priority site walks, and plans to short-list, and provide more evaluation opportunities with their applicants affording one-on-one conversations about inclusion planning and realities about outreach events. The owner's Design-Build procurement is one step in an effective inclusion plan. The heart and soul of inclusion, in his opinion, is how the team works together in designing the project, permitting the project, public outreach to the subcontracting community, and engagement further in the process. He is confident that with APEX, Hill International, and the organization's team that they are on the right path to maximizing inclusion within the project. He strongly believes the appeal has merit and plans to support the PFD.

Janet Jansen addressed the issue of appropriate schedule as cited by Mr. Rasmussen, and as part of Section C (1). Pertaining to project delivery, knowledge, and experience, the procurement method allows for the open competitive knowledge for all teams to learn about a potential project. As stated in the questions of "well, we might have missed a few contractors," there could have been contractors from Boise, Seattle, and other design-build teams that would have wanted to be part of the project. Limiting it to five days is concerning to her as well as the agency contacting contractors they knew in Spokane. Progressive Design-Build is the right delivery method for the project; however, the question is whether the applicant pursued the proposal correctly.

Mr. Forch echoed similar comments as Ms. Jensen. He is curious as to the condensed schedule as there is a construction phase and second phases as part of the design phase. He questioned the outreach associated with that portion of the project. It is part of the proposal that is concerning.

Olivia Yang asked whether the PFD reached out to only known contractors or whether the agency placed ads in industry-recognized publications. She asked whether an architect was hired and the architect's role with respect to the Design-Build team.

Mark Riker said he reviewed project documentation multiple times and feels somewhat challenged, as he prefers caution when contemplating overruling a committee's decision otherwise the Board would be assigned to assume those tasks. The information addressed by Ms. Thaxton was helpful because during the review of the documents completed by PRC members, it triggered a desire to review the PRC process as it appears to be disorganized. The Board has some work to complete internally to solve some of those challenges. He agreed the project timeline is tight; however, the RCW does not prohibit acting in a tight timeframe. If the Board's intent is to abide by the RCWs, he does not view the project as a complex or difficult project. The project meets two of the three criteria. He is struggling against his own nature to support the committee's work, as he does believe the committee's work was quality. Although interested in learning about other commentary, he likely would support Mr. Michel's position.

Bruce Hayashi commented that as an architect, he is aware of what is required to complete projects. He agreed the PFD has a tight timeline for the project and it would increase pressure on the contractor to deliver, which is not uncommon for any construction process. One of the challenges of the project, which is likely beyond the purview of the Board, is the scope while interior involves much casework. Casework during the summer is very difficult to deliver when the project is not in the pipeline early. That is one of the challenges for the project. The PFD will encounter some uphill battles, but he agreed with Mr. Riker that the challenges come with this type of project. The applicant will encounter some serious challenges that will need to be addressed during the course of the project. The timing could have been improved for both planning and timing of the project; however, he questioned whether those issues should be the sole reason for deferring the project, so to speak.

Ms. Thaxton addressed the concerns surrounding the timeframe for both the statement of qualifications and the project. The statement of qualification timeframe is for selection of the prime. She reviewed the application, and it appears that **assistance** has been contracted but not part of the Design-Build team to provide information and guidance. With respect to the RCWs, the issue is whether the applicant has a qualified team to complete the alternative contracting procedure. She believes the applicant has a qualified team. The team has reviewed the schedule and completed a fair amount of work on outreach and information sharing. As in most cases, a qualified team will determine that more time will be required. The information provided to the PRC is an estimate of the schedule when in reality the team will consider the realities of the market and move forward. Based on the completed score sheets and rationale for denial it appears to be tied to outreach to certified entities, which typically occurs after an award. She believes the procurement will be a robust process and has no problems supporting the project.

Mr. Rasmussen acknowledged he has never participated in a review process and requested clarification as the Board's role. Is our role to disagree with the reasoning PRC considered to deny the application or whether the review is based on PRC's authority to deny the application based on not meeting provisions within the RCW regardless of their individual reasons?

Chair Zahn responded that her interpretation of the Board role in the appeal is, considering the same facts and information about the project which was provided during the 20-minute video and Q&A, to make a decision on the project application.

Ms. Yang offered that Mr. Rasmussen's question is whether the Board agrees with the PRC decision and whether the Board agrees with the reasons for the decision. She admits that she is undecided as the information conveyed by Mr. Anderson resonated with her. The only question remaining is whether RCW 39.10 is based on RCW 39.04, which is open public competition, which is still troubling.

Vice Chair Michel commented that when a notice of opportunity is received by a public advertising venue, it is equal to other notices. The project timeline is short comparatively but based on the nature of the project and the procurement duration in an A3 format, the project schedule is not unrealistic.

With no further comments, Chair Zahn invited a motion.

Keith Michel moved, seconded by Robynne Thaxton, to overturn the Project Review Committee decision in the matter of the Spokane Public Utilities District Arena Refresh project.

The motion carried based on a roll call vote of members:

Corey Fedie – Yay

Bobby Forch, Jr. – Nay

Bruce Hayashi – Yay

Janet Jansen – Nay

Karen Mooseker – Nay

Matt Rasmussen – Yay

Mark Riker – Yay

Steven Russo – Yay

John Salinas II – Nay

Kara Skinner – Yay

Robin Strom – Yay

Josh Swanson – Yay

Robynne Thaxton – Yay

Olivia Yang – Nay

Janice Zahn – Yay

Keith Michel – Yay

Chair Zahn thanked the Board for the thoughtful deliberation as the decision was difficult. The decision was not unanimous. We as a Board should spend time discussing the complexities associated with interpreting the RCWs and ensuring that applications for alternative delivery procurements are following RCW requirements. She thanked Spokane Public Facilities District representatives for attending the special meeting. A letter will be sent to the PFD officially documenting the Board's decision.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 4:58 p.m.

Staff & Guests

Colin Anderson, Hill International, Inc.

Talia Baker, Department of Enterprise Services

Melissa Coulter, Spokane Public Facilities District

Stephanie Curran, Spokane Public Facilities District

Nancy Deakins, Department of Enterprise Services

Valerie Gow, Puget Sound Meeting Services

Jennifer Kletke, Spokane Public Facilities District

Matt Meyer, Spokane Public Facilities District

Christopher Verollo, Spokane Public Facilities District