**CPARB Public-Private Partnership Committee**

March 1, 2016, 9:00-11:30 a.m.

South Seattle Community College, Georgetown Campus, Bldg. E, Finishing Trades Building, Room 213

***Minutes (DRAFT)***

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| **Attendees:** |  |
| *John Ahlers, Ahlers & Cressman**James Lynch, Ahlers & Cressman**Mark Riker, Sheet Metal Workers 66/CPARB**Frank Young, Kiewit**Dan Howell, Skanska**Gary Rowe, WA State. Assoc. of Counties* | *Rebecca Keith, City of Seattle / CPARB**Andrew Thompson, Granite Construction**Ahmed Abdel Aziz, University of Washington**Mark Kimpton, Skanska (phone)**Rodger Benson, Mortenson (phone)* |

1. **Welcome & Introductions by John Ahlers (Ahlers & Cressman), interim chair (self-introductions by attendees)**
2. **Review of November 2015 Meeting Minutes**

No comments or objections

1. **Walkthrough updated draft legislation**

The committee’s objective is to present a consensus draft of the P3 legislation at the next CPARB meeting in May 2016. The committee walked through and commented on every section in the November 2015 meeting. The objective of the review and discussion was to achieve a “pre-final” draft.

The committee discussed each section of the current draft, focusing on redlines from the last meeting. The following topics were raised:

Is the term “capital maintenance” referenced in any IRS laws? This term is presently defined in the legislation to clarify its intended use in several locations and to acknowledge a potential distinction in some P3 projects between initial construction, standard maintenance, and higher-level maintenance work either to extend useful life or to restore portions of a project to the required condition for turnover upon expiration. The intention is not to implicate any IRS or tax provisions. James Lynch will review whether “capital maintenance” is a term of art in the tax code.

Committee members agreed it would be beneficial to compile examples of successful P3 delivery methods, including DBFOM, DBOM, and DBF, particularly from jurisdictions with good labor standards. Dr. Ahmed Aziz (UW) volunteered to provide examples from his research and experience.

The committee discussed how DBF is actually used in practice and why it would be attractive to private entities. It was mentioned that the FHA implements some projects using this methodology. Participants discussed whether “P3” should be limited to DBF, DBOM, and DBFOM, or whether these are simply examples. While DBFOM appears to be a core P3 methodology, the committee agreed a broader definition would be desirable. John Ahlers suggested language from a model statute that will be incorporated into the next redline.

Regarding section .510(c), the committee discussed whether there are any “built-in” assumptions regarding the public body’s pursuit of expressions of interest. This provision is intended to provide public bodies broad discretion to gauge the general interest of the private market before spending resources to develop a project. This may include reaching out to particular firms to determine potential interest, even if others may not be contacted or learn of the potential project until the solicitation. This does not affect the requirement that the procurement be an open, public, competitive best-value RFQ or RFP process.

The committee discussed unsolicited proposals. The current draft legislation is silent on this topic. As the committee anticipates this will be a question going forward, it was agreed it is preferable for the legislation to address the topic explicitly. Although there is a concern that private industry will have a disincentive to devote resources to develop and propose innovative projects that will subsequently be procured “on the open market,” the consensus was that a clear but non-prescriptive approach is desirable, namely, indicating that nothing in the statute precludes unsolicited proposals, but such proposals will still be subject to a competitive process.

There was discussion regarding the honorarium to be paid to finalists. Contractors expressed concerns based on experiences in Design-Build procurements where owners canceled the solicitation shortly before proposals were due, and thereby nullified any honorarium after finalists had incurred substantial costs developing final proposals. Owners are concerned that they will be forced to pay an honorarium if a project is cancelled before it gets off the ground, which may be for reasons beyond the owner’s reasonable control, and that risk would deter development of projects. The consensus was that this legislation will not dictate whether or when an honorarium will be paid, but will require the owner to specify the honorarium and whether there will be any compensation (e.g., based on a percentage) if the solicitation is cancelled before final proposals are submitted.

The legislation will be clarified to indicate an owner may review relevant financial information from finalists before deciding whether to require a performance bond.

The legislation will be modified to indicate the term of agreement may exceed 50 years, but only if authorized by the relevant review body.

Gary Rowe has reached out to finance experts in Olympia for their opinion of section 550 and any potential constitutional limitations.

There was substantial discussion about the project review process. The consensus was that a P3 subcommittee of the PRC may be appropriate, but the legislation will need to be clarified to ensure subcommittee members are approved by CPARB, there is sufficient guidance for meaningful project review, and there are measures to ensure adequate availability and participation by subcommittee members.

The legislation will be revised to clarify its relationship with Design-Build, GCCM, and other methodologies. Particularly, the dollar limits for other methods neither impact nor are impacted by P3 projects.

1. **Upcoming activities**

James Lynch will update and circulate meeting minutes and an updated draft. Further input from committee members will be solicited by email.

When the legislation is submitted to CPARB, a brief presentation regarding P3 will be useful. Dr. Aziz volunteered to provide materials he has used in the past.

Additional comments received by email will be incorporated into the next draft to the extent consistent with the committee’s discussions.

If consensus can be achieved by email, the legislation will be finalized and presented to CPARB in May. If there are substantial additional comments or other circumstances warranting an additional committee meeting, a final meeting will be organized to occur in April or early May.

*Minutes prepared by James R. Lynch, Ahlers & Cressman, PLLC, jlynch@ac-lawyers.com*