

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

1500 Jefferson – Presentation Room

Olympia, Washington

September 8, 2016

Members Present

Bill Frare (Chair)
Andrew Thompson (*VChair*)
Teresa Berntsen
Rep. Vincent Buys
Steven Crawford
Greg Fuller
Ty Heim
Joaquin Hernandez
Charles Horn
Rebecca Keith
Santosh Kuruvilla
Brent LeVander
Robert Maruska
Lee Newgent
Alan Nygaard
Irene Reyes
Mark Riker
Gary Rowe
Walter Schacht
Mike Shinn

Representing

State Government
General Contractors
OMWBE
House (R)
School Districts
Specialty Contractors
Public Hospital Districts
Private Industry
Insurance/Surety Industry
Cities
Engineers
General Contractors
Washington Ports
Construction Trades Labor
Higher Education
Private Industry
Construction Trades Labor
Counties
Architects
Specialty Contractors

Members Absent

Senator Bob Hasegawa
Lee Newgent
Rep. Steve Tharinger
Vacant

Representing

Senate (D)
Const. Trades Industry
House (D)
Senate (R)

STAFF & GUESTS are listed on the last page

Welcome & Introductions

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:04 a.m.

A meeting quorum was attained.

Everyone present provided self-introduction.

Approve Agenda - Action

Chair Maruska reported John Palewicz is scheduled to brief the Board on Agency Recertification – Review 90-day Submittal Requirement on behalf of Curt Gimmestad.

Andrew Thompson moved, seconded by Rebecca Keith, to defer action on the Public-Private Partnerships agenda item.

Chair Maruska advised that procedurally, the Board should consider such action during the discussion of the item.

The makers of the motion withdrew their motion.

Bill Frare moved, seconded by Andrew Thompson, to approve the agenda as amended. Motion carried unanimously.

Approve May 12, 2016 Meeting Minutes – Action

The following change was requested to the minutes:

- On page 19, revise the last sentence in the first paragraph to state, “P3 projects may benefit taxpayers by lowering long-term project costs and improving the quality of service – or both.”

Alan Nygaard moved, seconded by Bill Frare, to approve the minutes of May 12, 2016, as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Project Review Committee

May, June, July Meetings Report

John Palewicz, Chair, Project Review Committee (PRC), reported on the outcome of the May, June, and July meetings. In May, the PRC elected Rustin Hall as Vice Chair. The Vice Chair serves a one-year term and automatically advances to the Chair position. Mr. Hall, an architect, resides in eastern Washington and represents the private sector.

Walter Schacht arrived.

During the May meeting, members received in-house training and discussed agency certification. In 2007 when the law was changed establishing the PRC, the issue of certifying an agency well experienced in public projects was addressed. The statute includes language and a discussion on how much agency experience should be in-house as opposed to consultant assistance. PRC members discussed the issue and received guidance from the Board indicative of each member having the responsibility and ability to assess the experience level of each agency during a three-year certification or recertification review process.

Irene Reyes arrived.

At the May meeting, PRC members considered two agency certifications from Northshore School District and Lake Washington School District. Mr. Palewicz shared that he also serves on an oversight committee for the Seattle School District and is familiar with issues many school districts face in terms of the reliance on the passage of levies and bonds for many school projects. Those projects are typically cyclical making it difficult for many districts to maintain an experienced level of staffing. School districts are prime candidates for relying on consultant expertise to augment staff resources. Of importance to the PRC was ensuring a sufficient body of knowledge and experience in alternate public works exists at all levels of an agency. The goal is to not have just one project manager who has completed a General Contractor/Contract Manager (GC/CM) or Design-Build (D-B) project. Rather, it is important the school board and/or governing body, as well as affected departments have the experience and understanding of alternative public works delivery. When PRC members considered the applications of both school districts, members acknowledged that 90% of Northshore School District's experience was in-house with several experienced project managers and construction managers who have been with the agency for over a decade not as employees, but as contract employees, which created some confusion. Following discussion, members understood the arrangement is typical for many school districts, as many employees in capital project departments are contracted and have worked for the district for many years.

Lake Washington School District relies on a consultant, OAC Services, to manage the district's program where OAC provides the program manager and a number of project and construction managers to augment agency resources. The same situation has typically applied to the Seattle School District where consultant firms manage a program or the district utilizes a combination of in-house knowledge and experience with staffing resources provided by consultants. Lake Washington School District demonstrated solid in-house experience by its leadership and executives within the school district. The district augmented staff after approval of a new bond measure with well-experienced project and construction managers from a consulting firm. In both applications, PRC members believed each district was well prepared to receive certification. Members approved both applications unanimously for GC/CM.

At the May meeting, members considered and approved a GC/CM application for a Midway Elementary School modernization project.

A special session was held on June 9. There is also the possibility of conducting a special session in October.

CPARB MINUTES

September 8, 2016

Page 3 of 22

Special sessions are typically more conducive for project approvals. The PRC establishes panels of eight members with a minimum quorum of 6 members required for project approvals while agency certification requires a minimum 60% of the PRC quorum or at least 18 members in attendance.

At the June meeting, members considered and approved two GC/CM applications from Central Kitsap School District for New Central Kitsap High School and Olympic High School.

The July 28 meeting included an agency certification and eight project applications requiring two meeting rooms and concurrent panel reviews of project applications. Members approved University of Washington's recertification for GC/CM and D-B. A trend is developing whereby agencies originally approved for GC/CM and D-B separately are now combining recertification applications for GC/CM and D-B rather than submitting two separate applications.

Project applications approved at the July meeting included:

- City of Spokane – Combined Sewer Overflow Reduction Control Facility – GC/CM
- Issaquah School District – Pine Lake Middle School – GC/CM
- Spokane International Airport – Security Upgrades – GC/CM. Some panel members believed the project might be better served as a Design-Bid-Build project. However, after discussion, the project was approved for GC/CM with one member voting against.
- Spokane Public Facilities District – Veterans Memorial Arena Renovation – D-B. The agency applied for Progressive D-B, a non-competitive model of D-B. Many agencies are utilizing Progressive D-B, especially in the Spokane area. The project was approved unanimously.
- Western Washington University – New Student Housing – GC/CM. The project application generated much discussion by panel members in terms of the appropriateness of the project delivery for GC/CM as opposed to D-B-B. One member voted against believing the project would be better served as a D-B-B project rather than alternative public works. The agency presented a compelling argument in terms of meeting a specific budget, timing associated with housing availability at the beginning of the school year, and working within a congested and occupied campus.
- Mount Vernon School District – Madison Elementary and East Division Elementary – GC/CM. The application was for two projects consisting of a renovation and construction of a new building. The agency combined the projects and submitted the application as one project because the project required the demolition of one building and relocating students to another school while construction occurred on a new school.
- Seattle School District – Bagley Elementary School – GC/CM. The project is a partial renovation and addition to an existing building.
- Central Valley School District – North Pine Middle School – GC/CM. The project is construction of new middle school on a site housing an existing and occupied middle school. After completion of the new school, the existing school will be demolished.

Mr. Palewicz presented a chart of PRC applications and actions from January 2016 through July 2016. The chart denotes agency certifications, agency recertifications, and project applications. It is not possible for PRC to track all GC/CM and D-B project completions because agencies receiving certification are not required to submit project applications to PRC.

The City of Richland was not approved for certification for D-B because members believed the application was too weak although the agency completed a successful D-B project. However, the applicant wanted the certification to apply to the entire agency, which lacked the depth of experience throughout the agency.

Approved agency GC/CM certifications during the May meeting included Northshore School District and Lake Washington School District. Sound Transit received recertification approval of its GC/CM & D-B application in January followed by Washington State University for GC/CM & D-B and University of Washington in July for GC/CM & D-B. The PRC considered and approved 16 GC/CM projects since January and one D-B project. Agencies have been well prepared when presenting project proposals. Because of the increase in projects, the PRC conducted special sessions in February and June.

The PRC may conduct another special meeting in October to consider an application. PRC members discussed the potential of meeting monthly but elected to consider applications on a case-by-case basis as project applications require eight panel members and are easier to schedule.

Chair Maruska asked whether the PRC votes separately for recertification when an agency applies for GC/CM and D-B or whether the vote is combined for both delivery methods. Mr. Palewicz advised that members receive scoring and voting sheets for each delivery method and vote separately because the agency might not be well suited for recertification for one delivery method.

Mr. Thompson asked whether the meeting scheduling process has been effective for members to manage. Mr. Palewicz responded that typically, applications are required for submittal by the first of each month for processing prior to the meeting at the end of the month. Typically, most agencies have notified DES of a pending application. In those cases requiring a special meeting, establishing a panel is much easier than organizing the full assembly. Special meetings have not become an issue at this point. Mr. Thompson pointed out how normalizing the special meeting process might convey the wrong message to agencies. Mr. Palewicz replied that all members accommodate the meeting need to the extent possible. All 30 positions on the PRC are filled, which also assists in scheduling special meetings.

Mr. Thompson noted that the prior description of Progressive D-B as a non-competitive process should be clarified because it is a competitive process although price factors are not as important. Mr. Palewicz acknowledged the number of discussions on the two methods of D-B whereby in previous processes, the D-B method entailed submittal of completed design and costs. Today that process is often considered Traditional or Competitive D-B recognizing that all solicitations are competitive while Progressive D-B includes a pricing factor while completed design and associated costs are often not included in the submittal. Teams are selected largely on qualifications and involved earlier in the process to assist the agency in developing the project. The Spokane project included a budget of \$4 million. The owner was seeking assistance to accommodate the budget and include upgrades.

Santosh Kuruvilla asked whether the PRC encourages agencies seeking recertification to provide information on lessons learned during certification. Chair Maruska reported the documentation for recertification was revised requiring agencies to include information on completed projects to include claims, issues, and resolutions, i.e. litigation or arbitration. The PRC would welcome suggestions to receive more information if it assists in decision-making. Mr. Kuruvilla asked whether it would be beneficial to the Board to collect the information. Chair Maruska said the information is included within the application and all applications are posted on the website. However, the information has not been summarized and placed in one central location. Administratively, and dependent upon resources, it might be possible to summarize the information.

Mike Shinn added that as a member of the PRC, agencies are asked about lessons learned during the hearing process. Often, agencies provide additional handouts on previously completed jobs describing lessons learned, as well as the types of projects that would be conducive for D-B or GC/CM. During the question and answer segment, the PRC has the ability to ask questions.

Mr. Palewicz confirmed that one of the questions by the PRC is a request to describe lessons learned. It also provides an opportunity for agencies to review projects completed over the last three years and acknowledge lessons learned. Lessons learned have always been part of the review conversation. He offered to add a request on lessons learned to the application.

Nancy Deakins noted that [RCW 39.10.460](#) requires public bodies using alternative delivery methods to provide data to the Board. DES is launching a new data reporting system that requires information on lessons learned from public bodies.

Agency Recertification – Review 90-Day Submittal Requirement ([RCW 39.10.270](#)) – Information/Action

Mr. Palewicz reported the issue surfaced several months ago. Currently, public bodies are required to submit recertification applications 90-days prior to the expiration of current certification. He was one of the proponents for

authorizing agency certification as a representative of the University of Washington when agencies were able to demonstrate a good record of alternative project deliveries. He also supported a three-year certification limit. The application deadline for recertification was included primarily to accommodate citizens desiring to testify in support or opposition and to afford sufficient time for the PRC to establish a quorum of the entire membership to consider the application. Unfortunately, the provision affected the Spokane School District, which applied for recertification but failed to meet the 90-day deadline. The PRC Chair and Vice Chair did not believe PRC had the authority to override the provision within statute. Subsequently, the school district was informed it did not meet the 90-day deadline and could not apply for recertification. Although, unhappy with the decision, the district understood the law and was advised of the option to apply for certification. Additionally, agencies applying for recertification within the timeframe do not necessarily need to delay its presentation to the PRC. The intent of the provision was to afford 90 days for the public to attend meetings.

Chair Maruska said the purpose of the discussion is to review the provision and particular situations. He received a request directed to the Board to suspend a recent recertification because the public did not receive the notice in sufficient time to attend the meeting and express opposition to the recertification application. The Board could consider whether to draft a bill changing the current 90-day requirement to either clarify the need to allow a specific number of days for public noticing prior to the hearing or eliminate the 90-day requirement and treat recertification applications similar to certification applications. He asked members for feedback on the proposals.

Representative Buys recommended a motion to change the statute to align with requirements under the Open Public Meeting Act.

Mr. Thompson suggested an alternative of considering other administrative issues inherent in [RCW 39.10](#) that might affect the efficiencies of the PRC and Board for consideration of proposed legislation.

Walter Schacht inquired as to the capacity of the Board to make administrative decisions for providing clarity within the realm of the RCW to avoid future legislative changes.

Chair Maruska said the issue was addressed with the Attorney General's (AG) Office. Interpretation of the statute stipulated the Board has no ability to interpret the provision differently. There might be other provisions that are not as specific where the Board could provide some interpretation.

Mr. Schacht said the 90-day requirement is logical; however, his question is how the public knows when the 90-day period has been initiated. He questioned whether there could be some form of amplification requirement or some other means by which public notification occurs. Chair Maruska concurred that the Board could assist in implementing what is required by statute as another approach rather than recommending changes to the statue.

Bill Frare said that when the Board previously discussed the issue; he promoted administrative efficiency and customer service. He was also a proponent of ascertaining whether the PRC could accommodate and waive the 90-day requirement, which was prior to the guidance received by the AG. Those principles are still important in terms of customer service and administrative efficiency. As the Board is unsure why the 90-day requirement was included or its purpose, he supports the suggestions to develop a list of administrative changes for submittal to ensure the PRC is customer-service oriented.

Irene Reyes said she believes that if the Legislature intended the requirement to be in a public realm, there likely was a valid reason. She supports the recommendation to follow standard meeting noticing requirements. Additional discussion should determine what kind of input the Board and PRC are seeking and whether it is within the strict confines of law, whether it speaks to recruiting certified firms, or increasing the use of small business, which is another priority in legislation. The issues warrant discussion to inform the conversation.

Steve Crawford pointed out that the 90-day requirement is prior to the expiration of the initial certification and has nothing to do with public notification and/or scheduling of the recertification on a PRC agenda. He agreed the most efficient action is meeting public meeting notification requirements.

Representative Buys said the intent of the provision was likely to prevent a lapse in certification coverage. If the PRC is able to process an application within a month with appropriate public noticing under the requirements of the Open Public Meetings Act, there likely could be an opportunity to change the requirement in the RCW.

Rebecca Keith offered that there is no bright line notice requirement in the Public Meetings Act, as it does not specify a specific notice. Noticing requirements and meeting schedules are established and published. Although there may be some minimum noticing requirements, the heart of the issue is the need for a line at which it is stipulated and conveyed to agencies that its certification is expiring. The issue is the amount of time appropriate for the PRC and for public notice. It likely would not entail a specific rule on the timeline for sufficient notice of a request, but rather how much time the PRC needs prior to expiration of the certification.

Ms. Deakins reported that when the statute was crafted and the PRC was formed, the intent of the 90-day requirement was allowing the Board sufficient time to evaluate whether the public body had submitted data when the Board was collecting data on projects. The Board has not collected data for the last five years. Public bodies were informed by DES that notification would be forthcoming when the new system is implemented. That was the initial consideration for the 90-day requirement; however, it may no longer be an issue if the new data system is able to provide timely information. The original system consisted of submittal through manual reporting.

Chair Maruska invited consideration of a motion as recommended by Mr. Thompson to consider whether other administrative changes might be included in any draft legislation.

Mr. Crawford said the issue appears to be two issues of a particular item that might be included on a list or creation of a list for consideration at a future date, which appears to be a separate piece of the process.

Chair Maruska moved, seconded by Steve Crawford, to direct 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.

Mr. Frare suggested that if other administrative changes are identified in November, those items should be included in the proposed legislation. Chair Maruska concurred if other changes are recommended, a draft of the changes would be necessary for the Board's consideration at its November meeting.

Motion carried unanimously.

CPARB Chair/Vice Chair Nomination/Election – with Reinstatement of Bylaws – Action

Chair Maruska reported the Board was unable to elect a Chair because of insufficient votes at the last meeting. Consequently, the Board suspended the bylaws and deferred election to the September meeting. As part of the action, the Board reinitiated the nomination process and posted a call for nominations on the website for both positions. Alan Nygaard and Bill Frare submitted letters of interest for Chair and Andrew Thompson submitted a letter of interest for Vice Chair. Based on procedures outlined in the bylaws, the Chair position is open to all CPARB members. After election of the Chair, the Vice Chair is either a representative from the private or public sector dependent upon the sector represented by the new Chair.

Chair Maruska responded to questions on the minimum number of votes necessary to elect officer positions. A minimum 10 positive votes are necessary to elect officers.

Discussion ensued on the potential of the Board failing to achieve the necessary votes to elect officers. Members were advised of options and encouraged to move forward with nominations and elections.

Chair Maruska invited comments from the two nominees for Chair.

Joaquin Hernandez arrived.

Bill Frare referred to his introduction at the last meeting. His vision of the Board is as a diverse group of individuals representing different elements of the construction industry encompassing greater knowledge than any one individual. The role of the Board is providing advice to the Legislature, which is responsible for developing innovative and fair contracting practices, removing barriers, and promoting project completions. Through the PRC, the Board is responsible for promoting an environment where alternative public works is successful by vetting agencies for experience and competency of the teams during project reviews. At the last meeting, some discussion pointed to his responsibility as the DES representative on the Board, as well as providing administrative support to the Board that might be perceived by some as potentially influencing decision-making. All members share those elements to some extent by the nature of each position and what each member brings to the Board. As a DES representative, he represents the agency while Chair Maruska represents ports. All members represent their respective constituencies. However, as a Board, each member considers what's best for the industry. All members must balance decisions similarly. The administrative functions in support of the Board center on scheduling meetings, meeting rooms, satisfying requirements of the Open Public Meetings Act, managing the website, and management of the Board's records. Administrative staff members do not establish policy or the agenda and do not participate in discussions or submit recommendations. There is a clear line of separation between the duties of administrative support to the Board as opposed to functioning as a member of the Board. In terms of comparison, Mr. Palewicz is the current Chair of the PRC and it could be inferred that Mr. Nygaard could have undue influence as the Chair of the Board because both individuals represent the same agency, although not likely, as each member serves in different capacities at the agency. All members are professionals and have integrity and approach duties in a similar fashion. His interest in serving as Chair is to ensure the Board remains open to new ideas and is a forum for discussion of issues affecting the construction industry prior to moving legislation to the Legislature, as well as ensuring the Legislature has confidence to refer issues to the Board for discussion and vetting. The Board represents true value in that scenario. He expressed appreciation for the opportunity to address the Board.

Alan Nygaard said he is a believer in CPARB as the Board is a diverse group. He and Mr. Frare are aligned in terms of the role the organization represents. From an historical standpoint, the work completed by the CPARB has resulted in better legislation that he would like to continue. The Board has the ability at the committee level and through its work on issues to accommodate the needs of everyone around the table. The role of the Chair is to help guide that work, ensure all voices are represented, and that subcommittees have the representation and opportunity to develop better products and recommendations. The Board was established on the idea of diversity by bringing different groups and organizations together and communicating and discussing issues intelligently. He has been in the industry before CPARB and understands the Board has been a welcome opportunity for everyone to communicate needs. In terms of comparison between him and the other candidate, it is difficult other than he would love to chair the organization and is proud to be a member. He believes he could represent the Board well. He looks to members, as there is likely no right or wrong choice other than he would like to represent the Board.

Chair Maruska opened the floor for additional nominations for the Chair position. No other nominations were offered. Chair Maruska closed the nominations.

Board members were invited to offer comments on the two candidates.

Ms. Reyes asked both candidates to provide input with respect to their current position and job on meaningful or impactful measures they have implemented to include supplier diversity and inclusion plans for Washington's small businesses and certified firms.

Mr. Frare responded that in terms of diverse business inclusion and supplier diversity at DES, the agency instituted inclusion plans on all contracts and participates in stakeholder outreach groups. DES participates in Tabor 100, an

African American Chamber of Commerce in King County, as well as participating in the National Association of Minority Contractors. The agency has provided training to other organizations and coordinates activities; specifically to Central Washington University (CWU) on its inclusion plans and tracking mechanisms. The agency implemented supplier diversity tracking software for real-time information for project managers to converse with contractors and hold them accountable for inclusion plans. The agency's program is beyond its infancy and although the program is strong, there is always room for improvements.

Mr. Nygaard reported on his work at the University of Washington for the diversity program over the last decade. His voice was one of a few advocating for diversity within the capital planning group. He currently supervises the program within the Capital Projects Office. Jim Evans reports to him as the individual in charge of the group. Recently, the University of Washington created a policy document for Regents. With the change in administration, more efforts have been underway to move the policy document through the University to strengthen implementation and recognition of diversity for procurement. From an educational perspective, encouraging administration to pay attention to the procurement piece has been more difficult when the concentration has been on students – but not for the lack of effort, as the group has pursued those issues for over a decade. The group was finally successful in implementing the program and opening doors. The University's current program includes working closely with the Procurement Office. Recently, the group completed Dun and Bradstreet programs in conjunction with OMWBE to provide information to contractors and Architect\Engineering (AE) firms and holding them accountable for their plans. He has been engaged in the diversity program with Doug Jennings. The program was effective to the extent of existing governing rules and policies at the University. On-going efforts over the years have attempted to change the rules and policies resulting in the University now heading in a different direction than in the past. He is proud that he was a part of that change.

Ms. Reyes requested clarification as to the reference to diversity program in terms of whether it's indicative of a diversity program or supplier diversity. Mr. Nygaard replied that within his sphere of influence at the University within the Capital Projects Office, efforts go hand-in-hand and he works closely with the Procurement Office, which works with suppliers. His specific experience is with AE construction issues. However, that does not mean there is no significant relationship with the procurement piece, but that the Procurement Office has its role in terms of its diversity program. Both departments work together to ensure similar language and in communicating results. From a goods and services perspective, he is not involved in the supplier program but is in terms of construction and design.

Ms. Keith spoke to the outstanding qualifications of both candidates and expressed appreciation to both candidates for stepping forward. Although, it renders a more difficult decision by the Board, it is important for members to elect a Chair. The position is not just about setting policy and agendas, it is important to consider the contribution of resources towards managing the process, i.e. chairing the meetings and moving through agenda items. Both candidates are equally qualified and it should not just be about diversity programs, but about managing the organization.

Chair Maruska asked the candidates about their approach in working with the Legislature on CPARB bills or bills CPARB has officially endorsed or not endorsed.

Mr. Nygaard said he believes there is no one way to work with the Legislature other than it depends on the subject matter and the importance and thoughtfulness in the approach to an issue. Securing supporters and individuals willing to consider the issues is an important step in processing Legislative issues. Having the clarity and the understanding of the subject matter is also important. It is important when the Board presents a proposal or moves an issue forward for members to have a clear understanding of the need to do so and what the value is to the community and to the state. When the Board is able to explain to the Legislature the process undertaken and how all voices and diversity were fully vetted throughout the process, it conveys the Board's credibility to the Legislature. His specific issue is to ensure that when moving forward, the Board understands credibility is imbedded in its recommendations to the Legislature.

Mr. Frare acknowledged that one of the most important aspects of working with the Legislature is beginning early and creating an understanding with key members on what the Board is trying to accomplish with its goals, recommendations, and reports. Working off-session and moving those ideas forward when legislators are not as rushed is important. During

sessions, legislators have limited time to learn about any one issue before moving on to the next issue. The issues supported by the Board are often complex in nature affecting different constituencies. Legislators want to understand what the potential impacts could be to constituencies. The best way to be effective is to meet with the chairs and members of key committees in advance of the Legislative session to enable an understanding of the issue prior to session.

Mr. Kuruvilla commented that the genesis of the Board was tied to a greater focus on public construction. With the increased involvement of Sound Transit and the Washington State Department of Transportation (WSDOT), he asked how the candidates foresee engaging the horizontal construction community in terms of future policies and legislation.

Mr. Frare said the issue speaks to the importance of the Board's willingness to consider new ideas and allowing others to present ideas ranging from heavy-civil construction to any other type of contracting method. As long as the Board is open and embracing to new ideas, more ideas will follow. He does not foresee any campaign to incorporate WSDOT within the Board; however, maintaining communication and conveying the Board's availability would be his approach.

Mr. Nygaard said his perspective is having the ability of learning from one another and encouraging other ideas. Progressive D-B was initially a tool generated from the civil industry. The idea that vertical construction is now accepted and touted as a way to move public agencies forward is a good example of why it is important for the Board to be receptive to different views. It is important the Board listens, exchanges ideas, and extends invitations to organizations to offer information. Adding more tools to the tool chest can only help everyone accomplish goals in the industry regardless of whether construction is vertical or horizontal. Within that realm, representation on the Board over time might change, which is inherent in the process as more tools align. It is important to consider and to seek the appropriate opportunities to implement changes.

Joaquin Hernandez said that the comment about the potential conflict of one candidate working for one entity or another when each candidate works for a public agency speaks the importance for the Board to consider affiliation not as a conflict, but as an asset and strength. The Board will always make policy. He is seeking leadership and the ability to move issues forward. He has worked with Mr. Frare. Mr. Frare knows the process. The same applies to Mr. Nygaard through his work within the University and his ability to work within government and know the ins and outs. Considering what each candidate does within their respective agency and how that could be applied to the Board to help make the Board stronger and transparent is how he is approaching his decision.

Chair Maruska closed the comment period on the candidates and moved to the vote.

Members voted for Alan Nygaard's candidacy as Chair. Mike Shinn, Alan Nygaard, Steve Crawford, Robert Maruska, Mark Riker, and Walter Schacht voted in support.

Members voted for Bill Frare's candidacy as Chair. Andrew Thompson, Brent LeVander, Santosh Kuruvilla, Greg Fuller, Teresa Bentsen, Joaquin Hernandez, Irene Reyes, Bill Frare, Charles Horn, Gary Rowe, Rebecca Keith, and Ty Heim voted in support.

A majority of the Board elected Bill Frare as Chair.

Chair Maruska recognized Andrew Thompson's nomination for Vice Chair.

Mr. Thompson congratulated both candidates. The selection was an extremely difficult decision. The idea of a level playing field and the ability of the Board providing a forum and transparency within the engineering and contracting community are extremely important and led to his decision to be part of the process. It also has been a learning opportunity for him personally. Within this forum, the Board is tasked with alternative delivery policy and statute. It is important for the Board to have a consensus or perspective from the broader community of labor, engineers, designers, architects, public owners, and the contracting community. The last three months spent determining who would be elected

as Chair was a deliberative and painstaking process. He supports the Chair and thanked Chair Maruska and Ed Kommers for their long-term service and support to the Board.

Chair Maruska called for nominations from private sector members for the position of Vice Chair. There being no additional nominations, Chair Maruska closed the nominations for Vice Chair. He invited questions of the nominee.

Mr. Thompson was unanimously elected to serve as Vice Chair.

Chair Maruska thanked the Board for supporting him over the years. It was a pleasure serving the Board and the opportunity to work with legislators. He transferred the gavel to incoming Chair, Bill Frare.

Chair Frare recessed the meeting for a break from 9:41 a.m. to 10:01 a.m.

Reinstatement of Bylaws – Action

Robert Maruska moved, seconded by Ty Heim, to reinstate the bylaws. Motion carried unanimously.

ECCM/MCCM Report/Update – Action

Scott Middleton, Mechanical Contractors Association, provided an update on the work of the ECCM/MCCM Committee on behalf of Ed Kommers, Committee Chair. The committee's goal is developing best practices for administering [RCW 39.10.385](#) and/or recommending statutory changes to the statute based on lessons learned. The committee has met five times since February. Committee membership includes nine appointees and 24 other stakeholders representing public bodies, GC/CMs, and specialty contractors. The committee reviewed each subsection of the statute and drafted and circulated a white paper. No consensus was achieved with the committee learning from several comments that the white paper might be too complicated prompting the committee to shift to general guidelines or principles of [RCW 39.10.385](#). Some statutory changes were recommended by some committee members. Similar to the white paper, consensus was not attained. Members plan to meet in late September or early October to revisit outstanding issues with a possible recommendation to the CPARB for statutory changes. The Board will receive a presentation at the November meeting.

Chair Maruska asked whether owners participated in the committee meetings. Mr. Middleton responded that representation was excellent with attendees from Sound Transit, Port of Seattle, City of Seattle, and King County.

Public-Private Partnerships Committee Report – Action

Andrew Thompson moved, seconded by Rebecca Keith, to defer action and pursue a discussion on Public-Private Partnerships (P3).

Robert Maruska queried John Ahlers about any concerns to defer the requested action. Mr. Ahlers advised that the Board was briefed at the last meeting and the committee is ready to proceed with the Board's action. He is unsure as to why postponement of action has been requested.

Mr. Thompson provided some background on the deferment request. From a contractor perspective, his interest is in the success of P3 legislation. To ensure that occurs, more information sharing is required. He apologized to Mr. Ahlers and to the committee for the efforts extended and requested consideration for Boardmembers to air any concerns that might not have been shared during committee meetings. He acknowledged the time invested by the committee and stakeholders, which speaks to the importance of ensuring all questions are addressed.

Mr. Ahlers spoke on behalf of the committee. A number of individuals participated and volunteered their time. Boardmembers were invited to attend the meetings, as well as all constituents. It is frustrating to the committee, as well as for him to return to the committee and explain that some members who did not participate in the committee now want to have input. That does not allow the committee to operate efficiently as the committee collected all comments and reached a consensus through hard work. Many Boardmembers participated in the process. If there are concerns, it

appears the Board is conveying that the committee should consider those concerns. He inquired as to whether a list of concerns has been drafted to aid the committee in its work.

Ms. Keith commented on her involvement with the committee late in the process. She recommended pursuing a discussion by the Board and then determining the next step. The Board has not had an opportunity to discuss the proposal. She is prepared to share information on several follow-up issues and has received input from other cities expressing both interest, as well as some concerns. Her responsibility is vetting those concerns. It is important for the Board to discuss the proposal. She acknowledged the frustration and the work completed by the committee.

Mr. Ahlers said the issue is not about him but rather it is about all the people who have worked on the proposal. He asked for direction as to the request or whether the committee should delay activities until the Board vets the proposal.

Mr. Hernandez asked whether the proposed action was to adopt the proposed legislation from the committee. Mr. Thompson affirmed that is the request. Mr. Hernandez agreed deferral was warranted to afford an opportunity for the Board to receive an overview of the draft legislation. It would be important to convey the process the committee undertook in developing the draft and individuals involved when consensus was achieved. The proposal represents important legislation. Other legislation considered by the Board often consisted of a half page requiring several meetings to vet. With some guidance and support by the committee, the Board would benefit.

Chair Frare agreed it is important for the Board to review the proposal.

Mr. Schacht added that the Board has not received a comprehensive presentation on all the issues surrounding P3 legislation. He expressed appreciation to the committee for its work; however, the committee was established voluntarily. Many members agreed to explore the possibility of legislation for CPARB's consideration. The Board has a fundamental obligation and responsibility to consider whether the proposed legislation makes sense and whether P3 makes sense for the state, as well as understanding the specifics of the proposal. Other obligations prevented his participation on the committee. Participation or non-participation by Boardmembers does not eliminate the Board's obligation to review and vet proposed legislation. His concern during the last presentation surrounded the positives of P3 and no mention of potential downsides. He sent an email to the Board expressing concerns about receiving information only on the positive aspect of the proposal and no potential negatives. It is important to be honest and acknowledge that all forms of procurement; alternative or otherwise, have elements that work and don't work. It is not possible for members to fulfill their responsibilities as Boardmembers unless both sides of the issue are addressed. During the Board's discussion he plans to address some concerns on behalf of architects and is hopeful the committee will share both pros and cons of P3 legislation. Other states have employed P3 for vertical construction. The American Institute of Architects (AIA) published its recommendation on proposed P3 legislation. He is hopeful the committee could share comparative analysis of the proposed legislation and other proposed legislation in other states, as well as how the proposal relates to AIA's recommendation.

Representative Buys encouraged the Board, prior to rendering a recommendation to the Legislature, to work with Office of Program Research (OPR) staff and the Capital Budget Committee as the proposal is not in the final form prior to submission to the Legislature. He authorized using his name as a reference to afford the ability of the Board to work with OPR staff and the Code Reviser's Office to appropriately develop the draft.

Ms. Keith reminded the Board that at the May meeting, the Board approved placement of the proposal on the agenda for draft review and comments. She is scheduled to provide a presentation to the Washington State Municipal Attorneys Association and was planning to share information on the proposal. Although she may have misunderstood, she was surprised the proposal was included as an action item on the agenda.

Ms. Berntsen echoed similar comments offered by Mr. Schacht. As a public entity, there is a process she is obligated to follow to support or oppose legislation. That process requires time; otherwise she would abstain from any vote.

Mr. Maruska recommended moving forward with the presentation to determine next steps and afford an opportunity for members to have an opportunity to provide input.

Mr. Ahlers noted that it would be helpful for the committee for the Board to identify specific concerns as those concerns could have already been addressed in the proposed legislation.

Mr. Thompson recommended focusing on the goal to successfully implement P3 legislation. The application would likely apply to significant projects. One concern involving the current statute is application of [RCW 39.10](#) to a heavy civil marketplace when the origin was focused on the vertical marketplace. A quick step back might afford a better job of avoiding some of the challenges currently encountered in 39.10 and the marketplace to afford better legislation for P3. It might be possible to create a list and afford time for Boardmembers to attend a committee meeting to work through the issues.

Mr. Ahlers recommended a briefing to the Board on the statute. He asked the Board to establish a process to identify the issues for the committee's review. The committee has extended invitations to the Board; however, it appears many Boardmembers wanted to provide input to the committee but did not have the time to attend committee meetings. It is important to receive the Board's input and concerns to enable the committee to respond.

Chair Frare called for the vote on the motion.

Motion carried unanimously.

Mr. Ahlers referred to the Executive Summary of Draft Legislation for P3. The summary includes draft legislation recommended by the committee and a summary of issues considered by the committee. The committee is comprised of representatives from ports, WSDOT, Sound Transit, counties, cities, contractors, trades/labors, academia, and other community members. The committee began its work 14 months ago and reviewed concerns. The committee reviewed other state statutes and borrowed some language to form the draft. However, the proposed statute is unique and is not patterned after any other state. Many drafts of the legislation were reviewed. Those drafts addressed various issues identified during meetings and email exchanges.

The purpose of the statute is to afford Design-Build-Operate-Maintain and Finance. Some committee members completed similar types of projects in Canada and shared information on successes in Canada. The University of Washington shared information on studies of project successes and failures. P3 affords flexibility to construct highways, bridges, hospitals, or city buildings under the umbrella of the statute enabling significant flexibility to owners when projects align with specific parameters within the statute. The proposal is not intended to replace other procurement methods but could be used for specific projects where private financing augments an owner's financial ability. The statute includes a process for the builder to assume more responsibility in the selection of the elements of the building process, as the project must be viable for a specific period of time resulting in gaining some efficiencies related to longevity of the facility and in the selection of materials. The goal is to provide public owners with flexibility. Other important provisions in the statute is ownership of the facility by the public owner rather than by a private entity. The project is completed on a public works basis and must conform to prevailing wages and bonding, etc. The statute provides flexibility in terms of financing and it does not require 100% financing from the private sector with funding appropriation and allocation determined by the public owner. Additionally, the statute includes an outreach program for small and disadvantaged businesses.

The committee utilized the provisions from heavy GC/CM legislation. The proposal applies to both vertical and horizontal construction. The committee reviewed other state statutes and was unable to identify any specific statute that would address the needs of the state and the concerns voiced by the committee. The draft was tailored specific to the state. Mr. Ahlers shared that he reviewed concerns of the AIA and believes the proposed legislation addresses those concerns.

Chair Frare referred to comments on both the positives and negatives of the proposal. He asked about any major risks associated with the proposed legislation. Mr. Ahlers conceded there is risk of misuse for any statute. One area of controversy is the proposed establishment of a subcommittee of the PRC to oversee and analyze projects. Some stakeholders believed the designation should be another entity. The PRC is a subset of CPARB and includes membership of qualified individuals. Other states have established a separate agency. However, stakeholders on the oversight committee as a subset of the PRC would work similar to PRC's process to review GC/CM projects. Checks and balances against misuse were borrowed from the GC/CM legislation by establishing a subset of the PRC to review and assess whether entities using the statute considered all factors, risks, and have the appropriate team to complete the project. That concern was aired and the proposal helps to alleviate those concerns. The proposal is not intended to apply to all projects as each project must determine the appropriate procurement method.

Mr. Hernandez questioned whether the review of the proposal by the PRC or other designated entity would review the financing aspects of the project. Mr. Ahlers said members with the appropriate expertise were included on the subcommittee. It is also possible to include more members with the appropriate experience as financing is an important element especially when tax free bonds could be involved. The financing element generated many concerns primarily because it does not make sense to borrow funds from the private sector when public entities can obtain funds through tax free bonds. That aspect would be a determining factor for financing options.

Ms. Keith agreed municipal bonds are much more cost effective, but revenues for repayment are also important. Because many jurisdictions shy away from increasing taxes, it could create situations to access private sources for reimbursement. The financing element is one of her concerns, as well as concerns by other public entities in terms of a subset of the PRC and stakeholder expertise on pricing risks, construction projects, and delivering a project. However, the legislation is unique because it contemplates a long period of operation and maintenance, which involves a different risk analysis. While expertise has been included, the criteria the PRC subcommittee would use for project comparison is a reference from the D-B statute with no clear delineation on the types of projects that might benefit from this method. Those issues led to questions about the value added by the PRC review group. Although, some members of the group might have financial expertise, she questioned whether criteria have been sufficiently delineated. Another concern surrounding proposed 39.10.550 is the provision that speaks to the issue of bonds and that it would be a corporate obligation while another provision states it would not be considered a debt. She questioned how those two provisions align and whether the right input was obtained because the proposal speaks to a multi-jurisdictional effort for advancing the legislation requiring expertise.

Mr. Ahlers offered to review the provisions. He recalled the committee discussing the inclusion of the debt limitation but was unable to recall the specific conversations. Ms. Keith emphasized the importance of understanding the provisions before she could support the proposal. Although cities are interested in the proposal, there are concerns.

Mr. Shinn asked whether the proposed legislation is similar to the process used to construct the new Seahawks Stadium in terms of a public/private approach. Mr. Ahlers said the proposal is somewhat different as the public owner would request proposals from private industry to construct a project. Proposals submitted would establish the structure, as well as maintain the structure for the stated duration of the contract. At the end of the term, the structure's operation and maintenance would become the responsibility of the public owner. Portions of the project would be publicly and privately funded. Private investors would receive a return for investment.

Mr. Nygaard referred to the definitions section and language indicative that no public funds would be appropriated to pay for any part of the services. He asked why the limitation was included because D-B affords the ability to learn things as the design-build process proceeds. It is important to have the flexibility of bringing resources to the table. Limiting the ability to change after issuing a Request for Proposals could stifle improvements.

James Lynch responded that it was an issue the committee addressed and is related to other provisions in the statute pertaining to debt limitations. This provision speaks to the process of not obligating a public entity in the future by

ensuring the contract provides performance-based compensation and specifies a compensation structure while not becoming a debt that binds a public entity 25 years later during the operations phase.

Ms. Keith asked whether the question speaks to the issue of why the provision was locked at the RFP stage. Mr. Nygaard noted that it would also require a restart of the process. It could be part of the final agreement. The beauty of D-B is fewer specifics in terms of requirements because it affords the team some flexibility. Locking the process within the first advertisement seems too restrictive. Additionally, the definition of public body is included in [RCW 39.10](#). He questioned why the proposal includes a definition of a public body for this particular statute.

Mr. Lynch said the question speaks to a technical question. In section 500, the definitions are specific to P3 legislation. The overarching 39.10 definition of public body may or may not apply. The committee was unsure of the placement of the legislation after adoption. The proposal is essentially self-contained and references the existing definition.

Mr. Nygaard said another provision within the proposal that speaks to the RFQ/RFP process is confusing. Mr. Ahlers affirmed the provision should be clarified or removed. Mr. Nygaard said that conceptually, the proposal was well drafted with some final adjustments required.

Mr. Schacht shared several concerns. It would be helpful to brief the Board on the entire proposal that speaks to current agencies using P3 and successful and unsuccessful projects. The executive summary speaks to the proposal based on lessons learned. It would be helpful for the Board to receive information about those lessons learned to provide a more comprehensive context of the proposal and any potential impacts. The presentation would also assist in preparation of a briefing to legislators who may have many of the same questions/concerns and who could be approached by competing interests in support or opposition of the proposal. It is also important to review both sides of the issues. Many architects shared concerns and acknowledged that although the proposal provides a mechanism for financing that might not be available for public works, public works traditionally has been organized to enable equal competition by design professionals and contractors. The proposal, by nature privatizes, that process and eliminates qualification-based selection for design professionals. Although the proposal includes a competitive process calling for qualifications for selection of the primary contractor (concessionaire), once the contract is signed, additional items are no longer subject to the usual rules of procurement. The proposal could include some upsides or there could be ways of assigning work to small businesses or disadvantaged businesses that might not be possible in the realm of a typical public works bidding process. However, many design professionals have developed their respective businesses by competing based on qualifications. The proposal could potentially push those professionals to one side.

Mr. Ahlers replied that it would not be fair to the concessionaire to build in accordance with the budget and then not allow the concessionaire to select a team. Mr. Schacht conceded that it is an inherent limitation. However, with respect to the issue of funding, the method likely could result in increased costs to the public. Nonetheless, the process in the proposed legislation and how projects are authorized and reviewed must be fully informed of those aspects of the work and provide some recourse or some understanding that when projects are selected and the teams are established there is equity and value to the public.

Mr. Ahlers responded that there are members of the committee who have completed P3 projects. Many of the members are not contractors and are proponents of P3 because the right projects provide savings for taxpayers and could result in completion of more projects because of financing availability. Architects may not have been selected on competitive basis; however, architects were involved in those projects. In his view and in support of architects, more projects would benefit the profession.

Mr. Schacht said it speaks to the ability to compete for those projects effectively. At the end of the day, the public will have to pay for the projects and there are limited resources to pay for projects. He doesn't necessarily agree the financing mechanism involving private dollars would result in more public works because revenue sources are still limited whether through repayment of bonds or paying the P3 developer. If revenue is paying for the P3 mechanism, he questioned whether it's available to pay back general obligation bonds or whether it would shift over time.

Mr. Ahlers admitted to not being an economist to respond to the questions other than other countries and other states have adopted legislation and support the process. Although there have been some projects that have failed; no one has entirely eliminated P3 legislation with more states adopting P3 legislation.

Mr. Schacht summarized his request for the Board to receive information on lessons learned, where P3 has worked and not worked, and how the proposal addresses those lessons learned. Another issue is of project authorization versus agency certification. Relative to the Board's activities in support of 39.10, he asked whether there is an expectation to certify agencies for this method of procurement or whether it would be on a project-by-project basis.

Mr. Ahlers advised that the proposal includes no agency certification process.

Mr. Hernandez asked whether the success of projects could be attributed to the infrequent use of the P3 method. Mr. Ahlers affirmed there are fewer U.S. projects. Most of the projects are located in Canada. The committee was fortunate to have some Canadian representatives attend the meetings and share information on those projects. The failures were attributed to different types of projects while most of the successful projects were the type of projects envisioned under the statute.

Mr. Thompson cited an example of a potential P3 project important to the Snohomish County region as one reason why he supports P3 legislation. The project is a trestle connecting Lake Stevens to the cities of Snohomish, Monroe, Everett, and Boeing. Half of the 40,000 workers at Boeing cross the trestle each day. The trestle is as important as Seattle's Alaska Way Viaduct. Should the trestle fail, the failure could create a national security issue. Studies document that the project would cost at least \$1 billion, which likely would never be built unless it is built as a P3 project. As a contractor employed by a company completing P3 projects across the country, he views the proposal as an option for public owners to have an opportunity for reliability of a method that would enable the trestle project for many employees in the region. He is hopeful the Board can develop some language to enable select areas to determine alternative ways to pay for projects of critical need. The method could assist in funding hospitals, schools, and accelerate Sound Transit projects. He expressed interest in compiling a list of concerns and working through the committee to develop proposed legislative language.

Mr. Ahlers recommended members submit their respective comments within the next three weeks. He stressed the importance of identifying the concerns to enable the committee to address outstanding issues. He offered to schedule a presentation to the Board.

Representative Buys suggested that procedurally, the Board should receive a report with draft legislation. After the Board's review and initial comments, the Board, working with legislative staff, would prepare a Board draft for public comment to enable all interested parties to comment on the proposal. Following receipt and consideration of all comments, a final draft is prepared and presented to the Legislature.

Chair Frare affirmed the Board's commitment to provide comments to Mr. Ahlers and the committee no later than three weeks. Mr. Ahlers advised he would present a revised draft at the November meeting.

Mr. Crawford commented on the efficiency of the process for affording an opportunity for everyone to have an understanding of the proposal. He recommended scheduling time to review the document section by section after receipt of all comments and then scheduling time to review the draft.

Mr. Thompson recommended scheduling a committee meeting prior to the Board's November 10 meeting. Mr. Ahlers invited Boardmembers to attend the committee meeting.

The Board was advised to forward comments to Mr. Ahlers or committee members with copies forwarded to DES staff.

Mr. Schacht advised that he forwarded information on P3 to the Chair and Vice Chair. The information was also posted on the website. The information provides different perspectives on P3.

Design-Build Best Practices Committee Update – *Information*

Mr. Schacht briefed the Board on the status of work completed by the Design-Build Best Practices Committee. The committee has met monthly over the last 18 months with consistent participation by committee members and other stakeholders. The comprehensive process entailed many different points of view and issues. The committee finally achieved consensus on the draft 115-page document, which is posted on a public Dropbox site. All meetings and comments were transcribed and collated. The process is at the point to develop a consensus document.

Two major meetings were hosted by Washington State University in Pullman in July 2015 and July 2016.

The Design-Build alternative delivery method continues to grow in use among public agencies. Data does not reflect significant growth in D-B because most projects were completed by certified agencies and are not listed as individual projects. WSU uses D-B as its preferred delivery method while the University of Washington has recently pursued and expressed interest in using D-B and is moving away from GC/CM. DES is also completing more D-B projects. DES is also conducting training for project managers in October. The state is experiencing a significant expansion in the use of D-B by many agencies.

The committee's mission was developing some guidelines and best practices to assist all agencies engaged in D-B project delivery. Under the RCW, GC/CM is a highly prescriptive and regulated process. D-B is just the opposite, as there are fewer constraints. Throughout the process, public agencies were receptive to include some constraints while acknowledging the benefits of flexibility inherent in D-B because the method is so adaptive. Best practices guidelines could benefit especially as the RCW lacks details.

Of note is the lack of common terminology and a lack of understanding of all mechanisms within D-B because the method has several flavors of progressive versus traditional. The committee, at this point, has not produced the guidelines. The next step is reducing the 115-page document to a 25-page document prior to the committee's next meeting in October for presentation to the Board in November.

Because of the number of public owners involved in the process, it was possible to inform on-going processes even though the guidelines have not been finalized. Some agencies are beginning to use Progressive D-B and have released RFQs that did not include an RFP phase nor did it request costs. In terms of competition, the guidelines address the importance of advance notice. The committee's process has positively influenced some active D-B projects.

At this time, WSDOT is undertaking a formal review process for D-B.

Mr. Thompson advised that WSDOT recently presented its findings to the Transportation Commission.

Mr. Schacht acknowledged Mark Gaines from WSDOT for his contribution to the process. WSDOT is focused more on horizontal while the committee is focusing primarily on vertical construction. The report includes some information about why D-B is often selected as a delivery method by public owners. The goal of the guidelines is to improve outcomes for D-B as a standalone delivery method, include information on why public owners choose D-B, and share information on limitations. The guidelines do not evaluate D-B as a procurement method.

The guidelines will also help align delivery type with owner needs and goals. WSDOT, Sound Transit, and the Port of Seattle employ processes for evaluating risks before assigning the type of project delivery method. A number of tools are available for instituting that process with some agencies borrowing other agency tools as a crosscheck. Not all owners evaluate risks and arbitrarily select a delivery method. Occasionally, the state capital budget designates the type of project delivery. The guidelines recommend that all agencies evaluate project delivery types and assign the delivery type through an assessment process. Many of those tools are published on the website.

One major issue of concern for all public agencies is the relationship between funding and the type of D-B delivery. Traditional D-B or Bridging D-B often establish teams who bear some level of risk competing for the work. The State Board of Community and Technical Colleges is currently in the selection process for Traditional D-B, which is the riskiest and most competitive delivery method for teams. There is no clarity as to whether the projects will be funded after the team is selected. Inherent in the proposal are some recommendations about surety of funding. The amount of effort asked of design builders to complete the work should have some alignment with surety of funding.

Under Progressive D-B, contracts are awarded after selection of the team based on qualifications and cost factors. The design builder is generally not required to commit to a cost at the time of selection of the D-B team. The amount of risk to the team is significantly minimized. That benefit enables selection of the team and time to work with the team before defining the final project scope and cost. In many aspects, it emulates non-D-B procurement because there is a higher level of owner involvement and stakeholder engagement. In some ways, it can increase cost certainty because the project can proceed further before contract award. Progressive D-B can also be as competitive when comparing costs.

Traditional D-B is the classic form of D-B whereby the owner selects three teams to prepare a project submittal with selection of the submittal based on the best value for the project. Traditional D-B has been widely used but is experiencing a shift because owners are beginning to understand the risks and the cost to design teams.

Finally, Bridging D-B is used more for horizontal projects or when projects include federal funding. Bridging D-B affords the public agency the ability to hire the design team to complete design development to 30% providing a higher level of surety about the project. The owner then pursues the D-B delivery method to execute the project and hire the design builder who manages the contract documents, costs, and the project reducing risks to the owner. Bridging D-B is used more by WSDOT, Sound Transit, and other agencies.

Because of the lack of understanding of Progressive, Traditional, and Bridging D-B delivery methods, a lack of clarity exists for appropriate names of the preparatory documents. Frequently, agencies pursuing Traditional D-B often convey to competing teams that they will receive bridging documents leading to an implication that there would be a significant level of development of the design. However, bridging prescribes the desired outcome whereas in Traditional or Progressive, the owner is providing performance criteria. In some cases of Progressive D-B projects, the owner might ask the design builder for assistance to develop performance criteria. In Traditional D-B, the owner establishes the performance criteria and ranks the proposers for selection of the best prescription for execution of the project.

The committee has agreed that bridging documents go hand-in-hand with Bridging D-B procurement. In Traditional D-B, the owner would have pre-solicitation documents with the program and technical criteria, etc., while Progressive D-B might or might not have programming documents.

The committee also discussed Guaranteed Maximum Price (GMP) versus lump sum and developed a table to address concerns in the industry about what's included in an RFQ and RFP and appropriate pre-solicitation documents. Robynne Parkinson, representing Design-Build Institute of America (DBIA), attended many of the committee meetings and agreed the committee's work on defining pre-solicitation documents could benefit the industry nationally.

Other committee work includes significant information on selection criteria, selection panels, proprietary meetings, and introduction of technical concepts (borrowed from WSDOT) during competition. Most of the committee's time was focused on Traditional D-B because of the risk design-build teams assume to compete for a project. The issue surrounds uncompensated risk. The committee recognized the necessity of having a schematic level of design to assist in identifying costs as part of the submittal package. That level of work and extensive graphics necessary to convince the owner is uncompensated, as schematic level design is not compensated as an honorarium or stipend. According to the RCW, the level of effort required to produce the RFP submittal should be taken into account by the public agency when establishing stipends. Industry support for Traditional D-B would increase if public agencies pay the full fee required to produce the documents, although the high level of risk continues to exist when awarding the contract based on schematic design bids.

Over the years, GC/CM, which was originally intended to assign a MACC or place the responsibility for the cost on the contract during the early phase, has morphed to 90% construction documents before establishment of the MACC. In D-B, public owners are seeking the number earlier in the process thereby increasing risk to design-builders.

Mr. Schacht reported that other information would be included in the guidelines to help inform contractors and design professionals to assist them in competing effectively.

New Committee Proposal – High Performance on Design-Bid-Build – Action

Action on the proposal was deferred to the next meeting.

JLARC Review & Annual Report of UW Critical Care Roster – Information

Amy Engel, Director, Special Capital Projects, University of Washington (UW), introduced Jim Evans, Assistant Director, Business Diversity, UW.

Ms. Engel reported UW was granted through legislation the ability to prequalify contractors for projects at UW Medical Center (UWMC) and Harborview, as well as for specialized research facilities. She displayed photographs of a nuclear medicine upgrade completed at UWMC and an MRI facility. The roster assists UW to successfully complete construction projects located within acute care facilities. A majority of the renovations on campus can be accomplished at night contrary to medical facilities operating 24 hours a day and requiring construction activity to accommodate staff, students, patients, and visitors.

The rosters are used for both UWMC and Harborview. The rosters were created primarily because of patient safety, as well as to satisfy infection-control requirements on public works projects at both facilities. Additionally, another major issue surrounds electrical shutdowns. Because of the critical nature of medical facilities, it is important to have a roster of quality contractors to work within the facilities to ensure coordinated activities and electrical shutdowns. The RCW also afforded the ability for UW to improve scheduling because bidder responsibility often took three to four months to secure a qualified contractor. A majority of the projects also generate revenue for the hospitals.

The guidelines utilized by UW are in accordance with the RCW, which requires publication of the RFQ annually. Contractors are able to submit qualifications throughout the year. UW maintains A and B Rosters. Previously, mechanical and electrical contractors were included because Harborview received funding to upgrade infrastructure. Much of that work has been completed. Subsequently, UW maintains only A and B Rosters. The A Roster is for critical projects, such as MRIs and areas near patients. The B Roster applies to those projects located in gift shops, waiting rooms, or labs. Submittals are rated on the same point system for each roster and scores dictate placement on either the A or B Roster. Staff often meets with unsuccessful contractors to review scores and explain necessary steps for placement on one of the rosters. Typically, criteria surrounding safety and minority outreach have the greatest impact for placement on the rosters. Unsuccessful contractors are encouraged to resubmit after resolving issues. Contractors are limited to one resubmission each year.

A UW scoring committee comprised of members from the Capital Planning and Development and staff members from UWMC and Harborview review the submittals. Rosters are populated for two years. All scoring criteria are based on the RCW.

Projects placed on either the A Roster or B Roster are determined through a joint decision by the project manager, construction manager, Director, and hospital staff to identify risks associated with the location and type of project, potential impacts, and the critical nature of the project.

As bidder responsibility is no longer required for contractors, UW also agreed not to apply bidder responsibility for sub-trades.

Ms. Engel reviewed accomplishments to demonstrate the success of the program. Accomplishments include improved schedule duration by reducing schedules an average of one month and improved performance by contractors. The contractor evaluation form was modified to include apprenticeship utilization on projects based on the 15% requirement for apprenticeship utilization (campus-wide), as well as diversity to evaluate a contractor's business equity.

Ms. Engel displayed a chart of projects identifying how the rosters were utilized from 2014 to 2016. Three projects were included on the B Roster and nine projects were included on the A Roster. Today, the average award is \$680,000.

Ms. Engel reviewed a list of contractors on each roster. Roster A includes nine contractors reflecting a decrease from 14. Roster B includes three contractors, which reflects a decrease from six contractors since the last report.

Jim Evans briefed the Board on actions UW is pursuing for business equity, diversity inclusion, and participation and utilization of small, minority, and women-owned firms. He conceded that UW's participation figures are not stellar and continue to be an on-going issue for the Critical Patient Care Roster. Part of the reason is due to the specialized nature of the work and because of the screening process for project candidates. He encouraged the Board's feedback to assist UW in achieving better results.

UW is scheduled to issue a new RFQ for 2017-2018. UW anticipates incorporating elements in the RFQ to generate better results for business equity. UW previously published the roster RFQ through the Daily Journal of Commerce (DJC). UW is increasing dissemination of the roster RFQ to more partners other than DJC providing more exposure and increasing response. Targeted outreach includes certified firms that might be able to participate as general contractors. UW, unfortunately, has not received much response. In fact, the number of responses has dropped significantly. The University is pursuing an inclusive policy for business equity by targeting and reaching out to certified firms, as well as to other firms that are not certified but are qualified.

An annual meet-and-greet is conducted for general contractors and perspective contractors. The meeting provides an opportunity for contractors to meet and build relationships to improve the ability for placement on the Critical Patient Care Roster.

Staff reviews each submittal for the general contractor's outreach plan. Today, UW's outreach plan in the current RFQ is generic with questions focused on the length of time of a contractor's outreach plan and responsible personnel for the administration and execution of the outreach plan.

Moving forward, UW plans to screen firms to determine commitment to business equity by examining the prior history of the firm's utilization of minority, women, and small business firms on projects of similar size and scope. Another consideration is the firm's approach for outreach. UW plans to ask contractors to identify opportunities for engagement for small, minority, and women-owned firms on projects, and seek input on what firms perceive to be challenges for engaging those firms, as well as how contractors plan to optimize opportunities and mitigate challenges. Criteria will assist UW in determining whether firms have been successful and whether they recognize the challenges associated with securing placement on the Critical Patient Care Roster.

UW will meet with general contractors to finalize outreach plans during the RFQ process. UW's Business Equity Evaluation Panel will evaluate contractor outreach plans (based on criteria) and determine whether the plan is a comprehensive outreach plan. All Business Equity Evaluation Panel members are well versed in business equity.

UW will also track certified and non-certified participation and report on utilization of certified firms, as well as provide information on those firms not certified but working on projects.

Ms. Berntsen said that although she appreciates the efforts for outreach, firms will only pursue certification if they believe value exists for certification. Understanding that dynamic, she asked whether more weight has been considered for scoring of contractor's diversity participation. Mr. Evans said Capital Planning and Development is committed to the

business equity element and applies the legal minimum of 10% of total point value for the Critical Patient Care Roster, as well as for all solicitations by UW.

Ms. Reyes asked whether UW requires the prime or general contractor to include minority or certified firms. Mr. Evans explained that UW is legally precluded from including a mandate for participation. However, the University has committed to business equity and the Board of Regents issued policy specifically addressing business equity.

Ms. Reyes asked how UW measures accountability of the general contractor's small business participation. Mr. Evans said staff meets with contractors and reviews opportunities for participation for particular projects for subcontracting. UW is reviewing all firms in the state that fall under the category of minority or women-owned firms (certified and non-certified) and is establishing a goal for participation. Moving forward, UW and the contractor would agree on the goal based on mutual recognition of the opportunity for inclusion of those businesses. Monitoring will occur throughout the project to ascertain whether the contractor is utilizing those firms in concert with the goal.

Greg Fuller inquired as to whether there are any plans to re-establish the mechanical/electrical roster in the future. Ms. Engel advised that the primary reason UW established rosters for electrical/mechanical contractors was because of the infrastructure program. She doesn't foresee any new infrastructure programs at this time.

Mr. Kuruvilla asked whether UW is considering small firm mentoring programs within the scope of the business equity program. Mr. Evans said all options are under consideration to include some firms that might be good candidates for working on some of the projects even at the subcontractor level, as well as coupling smaller firms with firms that have the credibility and status to work with smaller firms. UW is exploring many options because the rate of participation is less than 1%. All personnel are focused on increasing business equity at UW.

Chair Frare recognized Stephanie Hoffman, JLARC. Ms. Hoffman reported that a preliminary report on the UW Critical Patent Care Facilities Roster Program is scheduled for presentation to the JLARC Committee on Wednesday, September 14 at 10 a.m. Following the presentation, the report will be publicly released. A final report will be presented in December.

Update on Disparity Studies and Governor's Business Diversity Subcabinet Efforts – *Information*

Chair Frare reported the presentation provides information on the difference between the disparity study by WSDOT versus the study by DES.

Erin Lopez, Business Diversity Initiatives Manager, DES, introduced Jackie Bayne with WSDOT.

Ms. Lopez reported inclusion numbers are far below the Governor's goals. The Governor, state agencies, and the community agree with the need to increase the numbers. In June 2015, the Governor formed the Business Diversity Subcabinet to improve diversity in state contracting and procurement. The Subcabinet reviewed the work plan and initiated some activities:

- Work is underway on a comprehensive list of meaningful measures instead of the current practice of relying on a single number.
- The Subcabinet requested a formal AG opinion on [RCW 49.60.400](#) (I-200).
- The Subcabinet will provide technical assistance.
- The OMWBE is reviewing its certification process for improvements while retaining the integrity of the process.
- Development of tools and practices to assist in fostering diversity/inclusion culture by reviewing state practices for procuring state contracts and compiling a list of pilot programs by agencies .
- Launching of forums, a website with a repository of tools and guides, and launching of a virtual community. The first tools for release are lead time and notification, empowerment, OMWBE tools, and race and gender neutral strategies for business assistance. The second set of tools include inclusion plan guidance, templates, and contract language

The process for developing the Washington State Disparity Study includes:

- Working with advisory group to develop recommendations on study scope and approach.
- Tapped expertise of nationally recognized disparity study expert, Dr. Samuel Myers at the University of Minnesota to develop Request for Proposals (RFP) for the study.
- Selection of successful bidder and in the process of negotiating the contract.
- Contractor anticipated to be hired and performing work by fall 2016.

The Washington State Disparity Study does not duplicate WSDOT's Disparity Study. The study includes over 30 agencies, covering 80% or more of state contract spending with voluntary participation by UW and CWU. The study will cover most categories of goods and services and non-transportation public works construction. The study includes second tier spending (subcontractors) where feasible.

Ms. Bayne outlined the differences between WSDOT's study and the state study:

	State	WSDOT
<i>Purpose:</i>	Governor's commitment	Legal requirement
<i>Scope :</i>	State contracting	Transportation contracting
<i>Analyzing:</i>	M/WBE and Veterans	DBE and M/WBE
<i>Outcome:</i>	Contingent on study results	Contingent on study results
<i>Status:</i>	Contract negotiation	Data collection and analysis

Data and analysis collection has been underway for the last six months with interviews scheduled to commence.

Mr. Thompson asked whether a target date has been identified to receive a response on the legal clarification from the AG. Ms. Lopez advised that no date has been identified to receive the information from the AG.

Mr. Maruska asked whether the state study excludes all WSDOT contracting to avoid duplication. Ms. Lopez said the state study does not include WSDOT contracting.

Mr. Kuruvilla asked about the potential of the same set of stakeholders participating in the interviews for both studies. Ms. Lopez said the state study has not defined stakeholders at this time. Ms. Bayne noted that the studies focus on different industries with WSDOT focused on transportation-related firms. It is feasible an individual could participate in both interviews, but not probable. Mr. Kuruvilla suggested the outcomes of each study should not be in conflict, which calls for some consistency. Ms. Lopez advised that both studies are data driven. Civil transportation construction is different than goods and services. Ms. Bayne added that the survey process is based on statistical guidelines published by the National Academy of Sciences.

Ms. Reyes asked about the percentage of the companies to be vetted. Ms. Bayne said one-on-one interviews are not contemplated for WSDOT's study. Ms Lopez said the work plan has not been completed at this time for the state study.

Mr. Thompson inquired about data integrity if there are missing agencies, such as Sound Transit or King County. Ms. Lopez said the ability to complete the study is having access to procurement data. Ms. Bayne noted the Ports, City of Seattle, and Sound Transit receive federal funds. The Federal Aviation Administration requested WSDOT conduct a separate statewide airport disparity study at a later date. WSDOT is considering a disparity study for all airports in the state. Sound Transit is a direct recipient of Federal Transit Administration funds and would need to conduct a separate disparity study because of the funding source and federal procurement rules. WSDOT is analyzing data from larger cities relative to highway construction through the agency's Local Programs Division.

Mr. Thompson commented that it appears large segments of the community could be excluded from data collection. Ms. Bayne responded that WSDOT does not have any jurisdictional authority over local jurisdictions and counties other than what the state contributes for transportation projects.

Mr. Shinn asked whether the study would examine the difficulty small companies encounter to secure minority participation, and whether it would address those circumstances where a minority contractor is unable to complete the work. Ms. Bayne replied that much of that type of anecdotal feedback would likely be generated through the focus groups.

Data Collection Schedule Update – *Information*

The item was deferred to the November meeting.

Agenda Items for November Meeting

Chair Frare reviewed agenda items for the November 10 meeting:

- PRC Report
- Committee Updates
- New Committee Proposal: High Performance Design-Bid-Build
- Data Collection Schedule Update
- Review of language for potential administrative change for Agency Recertification

Chair Frare introduced Talia Baker. Ms. Baker will provide administrative support to the Board. He reminded members to forward comments on P3 to Ms. Baker by the end of the month. Ms. Deakins reported members would also receive an email with instructions.

Adjournment

Robert Maruska moved, seconded by Alan Nygaard, to adjourn the meeting at 12:28 p.m. Motion carried unanimously.

Staff & Guests

Nancy Deakins, DES	Thuy Hong, Sound Transit
Talia Baker, DES	Khalia Davis, WSDOT
Kelsey Beck, City of Seattle	Jackie Bayne, WSDOT
Valerie Gow, Puget Sound Meeting Services	John Palewicz, UW
Amy Engel, UW	Stephanie Hoffman JLARC
Dick Lutz, Centennial Construction	Linneth Riley-Hall, Sound Transit
Scott Middleton, MCAWW	Larry Stevens, NECA
Frank Lemos, National Minority Business Advocacy Council	Erin Lopez, DES
Sheina Hughes, Stantec	Janet Knoblach, DES
Charles Wilson, DES	Jerry Vanderwood, ACC
John Ahlers, Ahlers & Cressman	Chad Merrill, King County
	Jim Evans, UW