

CAPITAL PROJECTS ADVISORY REVIEW BOARD

La Quinta Inn & Suites
4600 Capitol Boulevard SE
Tumwater, Washington 98501

DRAFT - Minutes

November 16, 2017

MEMBERS PRESENT

Bill Frare (*Chair*)
Andrew Thompson (*V. Chair*)
Teresa Berntsen
Rep. Vincent Buys
Steven Crawford
Greg Fuller
Senator Bob Hasegawa
Joaquin Hernandez
Rebecca Keith
Santosh Kuruvilla
Brent LeVander
Robert Maruska
Irene Reyes
Walter Schacht
Senator Judy Warnick

REPRESENTING

State Government
General Contractors
OMWBE
House (R)
School Districts
Specialty Contractors
Senate (D)
Private Industry
Cities
Engineers
General Contractors
Washington Ports
Private Industry
Architects
Senate (R)

MEMBERS ABSENT

Ty Heim
Charles Horn
Lee Newgent
Mark Riker
Gary Rowe
Mike Shinn
Rep. Steve Tharinger
Vacant

REPRESENTING

Public Hospital Districts
Insurance/Surety Industry
Construction Trades
Construction Trades Labor
Counties
Specialty Contractors
House (D)
Higher Education

Staff & Guests are listed on the last page

WELCOME & INTRODUCTIONS

Chair Bill Frare called the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:19 a.m.

A meeting quorum was attained.

Everyone present provided self-introduction.

APPROVE AGENDA - Action

Chair Frare requested the addition of a legislative request from Jerry Vanderwood with Associated General Contractors (AGC) of Washington. A second JOC Evaluation Committee report was removed from the agenda.

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

APPROVE SEPTEMBER 14, 2017 MINUTES – Action

The following change was requested to the minutes of September 14, 2017:

- On page 8, within the fourth paragraph, revise the second sentence to reflect, “*Within the Design-Build arena, stipend/honorariums from WSDOT are paid to the consultant with the contractor rarely retaining any honorariums.*”

Steve Crawford moved, seconded by Robert Maruska, to approve the minutes of September 14, 2017 as amended. Motion carried unanimously.

PUBLIC COMMENT

Chair Frare encouraged public comments throughout the meeting.

LEGISLATION OF INTEREST – Information

JOC Evaluation Committee Proposed Legislation

Amy Engle, Chair of the JOC Evaluation Committee, briefed and presented members with proposed legislation for Job Order Contracting (JOC). The Committee was formed last spring and met in May with a diverse group of stakeholders including public owners, contracting community, and owners not currently using JOC. As presented at the September meeting, the Committee captured data over the last eight years. Originally, four owners used JOC. Today, 13 owners use

JOC with many best practices developed over the years. Committee members expressed interest in continuing to meet to identify additional best practices. During the interim, the Committee proposes some legislative changes, as well devoting more time to develop best practices.

Over the last eight years, the number of projects has doubled reflecting success in the JOC program. MWBE participation statewide is at 18.2% of the contracted value. As of 2016, participation is valued at \$6 million in the JOC program for MWBE companies reflecting a 187% increase from \$35,000 in 2008. Work orders have doubled and JOC usage has increased 182%. The value of work orders increased by 41%.

Proposed legislation affects RCWs [39.10.420](#), [39.10.440](#), and [39.10.450](#). One proposed change is for public owner review by the Project Review Committee (PRC) for projects using JOC rather than changing legislation. Another proposal pertains to contract requirements to allow the use of unused capacity from the previous year carried forward to the next year's limits. This year because of no state capital budget, public owners could take advantage of unused capacity carrying forward. Another request seeks changes to enable agencies to use the \$6 million JOC limit, as well as an administrative clarification surrounding whether Washington State sales tax is included in work order limits of \$350,000. The Committee seeks changes to RCW 39.10.450 to increase the work order limit from \$350,000 to \$500,000 excluding Washington State sales tax.

The Committee prioritized the following recommendations:

1. Increase task orders from \$350,000 to \$500,000 not including sales tax.
2. Enable the carryover of unused capacity to the next year.
3. Increase \$4 million limit to \$6 million for annual contracts.
4. Administrative correction to exclude sales tax from annual limits.

For further consideration, the committee recommends:

1. Allowing public bodies to submit JOC projects to the PRC for review and approval.
2. Removing the requirement for all new construction to be no more than 2,000 square feet.

Ms. Engle responded to questions about the increase in WMBE participation. When JOC was first implemented, WMBE participation was valued at \$39,000 compared to nearly \$6 million in 2016. More research of data is required to ascertain how many companies were OMWBE certified with the assumption that 85% to 90% of the companies are certified.

Irene Reyes arrived at the meeting.

Senator Hasegawa inquired as to whether legislation recently increased the JOC limit. Ms. Engle said legislation in 2012, increased JOC task orders from \$300,000 to \$350,000. Senator Hasegawa asked whether the proposal to increase task orders to \$500,000 requires language similar to the legislation for higher education and ensuring outreach to WMBE participants. Ms. Engle said the committee has explored some of those options; however, provisions in the RCW require submission of outreach plans to the OMWBE for review prior to initiating a JOC contract. The issue is one of the discussion topics surrounding best practices.

Teresa Berntsen affirmed JOC requires inclusion plans. She also asked Ms. Engle to review [SB 5161](#), which speaks to inclusion plans to determine if any language in the bill might be plausible for JOC.

Mr. Maruska asked whether the committee considered allowing all public agencies to use JOC rather than defining a list of agencies. Ms. Engle affirmed that she supports the use of JOC by all public agencies. Mr. Maruska asked whether the Committee discussed an upper limit for any one year or whether the capacity unused in the first year could be used in the second year totaling \$8 million. Ms. Engle said the Committee's goal was for agencies issuing contracts for \$2 million in the first year to carry forward the capacity to total \$6 million in the following year. The Committee also discussed increasing the cap from \$4 million to \$6 million rather than removing the cap entirely.

Mr. Maruska added that the 2,000 square foot limitation for permanent enclosed building space was part of the original legislation because of concerns by local labor and specialty contractors who did not want JOC to be used for new construction. CPARB believed including the limitation was a reasonable way to address the concerns.

Chair Frare asked how the Committee envisions moving forward with any legislation. Ms. Engle said the proposed legislation was submitted with a summary of the changes. The changes are highlighted. It is also possible for the Committee to clarify higher education public owners and the different public bodies as mentioned by Mr. Maruska.

Mr. Maruska asked for the Board's concurrence to include language in the proposal opening JOC to all public owners.

Rebecca Keith questioned the purpose and the value of the PRC review as opposed to authorizing all public bodies using JOC. Ms. Engle replied that if all public bodies were authorized to use JOC, a PRC review would be unnecessary. Ms. Keith asked whether the Committee considered both options and whether the Committee only considered having the PRC review JOC projects. Ms. Engle responded that the Committee first considered the PRC process in the context of University of Washington's program and increasing the number of projects rather than pursuing a legislative change. Several examples were discussed by the Committee to include Western Washington's lack of a JOC program and JOC support and the option of submitting a proposal to PRC as the PRC is tasked to approve alternative public works projects. The intent was standardizing the process. However, if authorization was available for all public owners, there would be no reason to use the PRC process.

Chair Frare said that according to his understanding, JOC requires a certain level of expertise and administrative ability by the public body to advertise, select, review work orders, and implement cost controls to define the work and control costs. Not all public bodies have the ability to use JOC. He does not favor authorizing all public bodies to use JOC for those reasons and supports the idea of project proposals reviewed by the PRC for level of competency of the public body for approval to move forward. Administratively, it would be less restrictive than seeking legislative changes similar to what the hospital districts pursued several years ago.

Mr. Maruska said he spoke with several members who expressed concerns about current PRC members not assessed for JOC expertise. He would have concerns because there is a certain level of competency needed to ensure the reviewers have JOC expertise. Chair Frare affirmed that criteria for selection of PRC members have not included JOC expertise.

Chair Frare referred to the proposal to utilize unused capacity. Although some agencies have not been able to use all capacity this year, one of the reasons for the capacity limitation was because of the ability to release small contracts through the Small Works Roster or other small selection processes. Increasing capacity could result in small projects pursued as work orders under a JOC contract reducing utilization of the Small Works Roster process. That could have an impact on the development of small and diverse businesses by lessening the ability for them to develop the necessary experience and credit history required as a prime contractor.

Mr. Maruska shared some historical background surrounding the development of JOC. During the JOC legislative process, some the concerns addressed how JOC affords public owners with an efficient way to enter into contracting with no bidding because JOC projects are negotiated after selection of the prime is completed providing public owners with a short and simplified process to complete the project. From the perspective of smaller general contractors and specialty contractors, concerns centered on the potential reduction in market competition. Those concerns contributed to some of the work order limits within the initial legislation to ensure opportunities for participation of emergent contractors in a meaningful way so they could develop and compete as a prime while retaining either the Small Works or smaller dollar value major contracts for bidding and competing. Those factors were why legislation included a limit on work orders, size of the project, efficiency of the owner, and an annual cap. Initially, the list of public owners included those with large capital programs using JOC as a relative percentage of the large capital program (*with the exception of some school districts*). Some concerns for setting the limit too high surrounded the possibility of some public owners completing all projects using JOC.

Mr. Maruska asked whether the intent of the proposal is to present a CPARB bill or whether the University of Washington is sponsoring the bill and seeking the Board's support. Ms. Engle said the intent is for the proposal to move forward as a CPARB bill.

Chair Frare recommended the Board consider the comments and proposal and provide any feedback to Ms. Engle prior to the December meeting to potentially move forward with CPARB legislation.

The Board discussed next steps to draft language in bill format. Nancy Deakins affirmed staff and Ms. Engle would develop the proposal in bill format with tracked changes.

Frank Lemos, President, National Minority Business Advisory Council, supported the proposal to delay action until the December meeting because the community has limited time to review the proposal after the committee finalizes the draft. He stressed the importance of having sufficient time to meet with the community, review the language, and provide any feedback on potential impacts. Mr. Lemos added that he was aware of the JOC Evaluation Committee meetings; however, comments would not be forthcoming until the community has an opportunity to review the draft with all input. He cited a prior legislative bill in 2012 supported by the Council and stakeholders only to learn later that some language had been changed from 90% for small business and 10% for contractors to 60% for small business to 40% for contractors. That proposal was submitted as a legislative bill, which was unfair to the organization. His intent is to avoid a similar situation with this proposal.

Brent LeVander said he is also a member of the committee. The intent of the committee was presenting the findings at the last meeting, presenting the proposed changes at the November meeting, receive comments, and return with bill language and changes highlighted at the December meeting.

Ms. Keith expressed interest in receiving feedback from the community on the issue of capacity carrying forward based on the experience by the City of Seattle. Women and minority business participation has been better under the JOC program than with the Small Works Roster process. She is interested to hear feedback there might have an impact for carrying unused capacity forward.

Mr. Lemos noted that the City of Seattle's program is not the State program and participation is not from certified firms. Although he appreciates the success of the City's program, those multi-million dollar companies are not the focus of his organization. His organization is focused on certified Washington State companies.

Chair Frare summarized the process moving forward. Ms. Engle affirmed her intent to work with Ms. Deakins to develop a bill-like version of the recommendations for distribution to the Board and to the community.

Steve Crawford offered that the draft provided to the Board outlining the proposed changes in the RCW is clear and would serve as a good starting point to incorporate comments and feedback.

Greg Fuller said his company has worked on JOC projects. Most owners have three top favorite firms. Fuller Electric Company was invited because he notified Sound Transit that the company was not being invited to bid. Many owners with JOC programs continually use the same companies and do not consider other companies on the list. After his visit to Sound Transit, the company was awarded three projects.

Letter from Minority Business Advisory Council

Joaquin Hernandez reported during his two years on the Board, he has observed healthy discussions surrounding small business and minority contracting. Even the Design-Build Best Practices Guidelines discuss the lack of meeting any goals for minority contracting and disadvantaged business entities because of the difficulty of securing Design-Build contracts. During the Public-Private Partnership (P3) discussion, the extended committee process was because of issues surrounding women-owned and minority-owned businesses. At the last meeting, the Board received a letter from the Minority Business Advisory Council (MBAC) with no time remaining on the agenda to consider the request. Members also received a presentation from a representative from the Governor's Office on the status of numerous disparity studies underway in the state. The issue of WMBE continues to be important, as well as the suggestion to create a committee to discuss the issues in depth.

The proposal is not legislation but rather a policy/directive to the PRC to recognize the issue and define a process to evaluate certifications and recertifications. The proposal aligns with [RCW 39.10](#) in terms of how contracts are awarded and how small and disadvantaged business entities must be part of the conversation. It is part of the conversation in P3 legislation, and, in fact, if P3 legislation passes, the PRC would have a direct role in the procurement and how small and disadvantaged business are part of that process. At this time, there are no methods to measure progress.

Mr. Hernandez requested the Board's consideration to require public bodies to submit and the PRC review the following four items as part of the certification and recertification process:

1. Advertisement and solicitation requirements for inclusion plans
2. Outreach efforts to minority and women-owned firms
3. Contract language related to inclusion and outreach
4. Amounts and percentages paid to minority, women, veteran, and small business entities

Mr. Hernandez said the Minority Business Advisory Council has experienced some success with the University of Washington as part of new legislation this year overwhelming approved by the Senate and the House allowing the University of Washington to use alternative work delivery methods for critical care and health care facilities. One provision in the bill states, "*The University shall require contractors to solicit proposals from Office of Minority and Women's Business Enterprises-certified firms.*" That provision represents some strong language and requires contractors to contact OMWBE.

Mr. Hernandez asked the Board to adopt a motion approving the four policy directives and direct the PRC to include them as part of its review and certification review process.

Mr. Thompson supported the proposal but also acknowledged the difficulties of enacting the proposal statewide as the University of Washington might have better opportunities geographically because of the local pool of contractors while in other parts of the state it could be more challenging. The first three appear to reflect the philosophy of the Board; however, the fourth directive for data speaks to the Board's continuing challenge to collect data, which is a critical element of the Board's work. Should the Board consider a method for data collection it would also assist other areas of the state, such as disparity studies underway and other efforts.

Mr. Hernandez acknowledged the geographical location of the University of Washington versus owners in eastern Washington; however, market forces self-correct in those situations. Companies should be equally competing.

Ms. Berntsen encouraged the Board to shift thinking regarding availability of certified firms because many firms do not seek certification if they believe there is a no benefit. The agency has been willing to analyze the data to help locate firms that might be eligible for certification.

Santosh Kuruvilla offered a friendly amendment to the second item stating, "*Outreach and training and education efforts to minority and women-owned firms.*"

Mr. Maruska suggested the Board forward the recommendation to the PRC because the committee would need to determine how to incorporate the directives within its review process, as well as identifying evaluation factors. The PRC could present an implementation proposal for the Board's consideration. Additionally, a number of public owners have directed their organizations to expand outreach to the entire community of small, disadvantaged, veteran, minority, and women firms regardless of the status of certification and report that information. He would be uncomfortable conveying to public owners that those contacts could not be counted. It would be important for the agency to present the entire picture. An option also exists for identifying the percentage or portion of those companies not certified as the process could help to identify why some groups are under-represented. He is supportive of a motion to forward direction to the PRC to prepare an implementation plan. Another important factor for the PRC to consider is during its review of the advertisement for inclusion whether it would also be responsible to determine whether the inclusion plan was adequate, and if not, whether that would serve as a basis for not certifying the public body.

Senator Hasegawa said he is appreciative of Mr. Maruska's perspective in terms of obtaining all information regardless of the company's certification status; however, certification is an important criterion as there are ways to circumvent the system. The vetting process for certification eliminates much of that during the certification process.

Mr. Maruska recalled that Sound Transit or King County conducted an independent audit to identify certified and non-certified companies. That audit is publicly available. The audit examined the entire pool of certified firms and firms claiming to be certified.

Ms. Keith said she anticipated the request to the Board would be a legislative request, which she would support. However, she is concerned that the Board might be exceeding its statutory authority if the PRC is directed to implement the directives as criteria for public body certification to use alternative public works. She is uncomfortable moving it forward although supportive of the policy.

Mr. Hernandez replied that the intent is not overstepping the Board's authority but rather it is an issue the PRC should review because it is an accountability measure. Ms. Keith replied that the elements would be meaningless if the PRC was unable to consider it as criteria for certifying public bodies. Mr. Hernandez referred to criteria within the statute that requires consideration of small, minority, veteran, and women-owned businesses during the award process for alternative public works. The proposal advances that requirement to the forefront.

Joaquin Hernandez moved, seconded by Teresa Berntsen, that the Board, as a matter of policy, require PRC to include within its review of certification and recertifications the following:

- ***Advertisement and solicitation requirements for inclusion plans***
- ***Outreach and training and any education efforts to minority and women-owned firms***
- ***Contract language related to inclusion and outreach***
- ***Amounts and percentages paid to minority, women, veteran, and small businesses***

Walter Schacht said that although he is supportive of the intent of the motion he is concerned about the lack of previously communicating to the PRC the proposed action.

Mr. Hernandez advised that the directive to the PRC is to develop a proposal. Should the PRC encounter issues those issues could be addressed with the Board to determine an appropriate outcome.

Mr. Thompson commented that the PRC determines whether a project moves forward or receives certification by expertise or experience. Included with that is an additional set of criteria. He asked whether that falls within either expertise or experience because that is how PRC determines approval or denial. The PRC has previously requested guidance from the Board for different interpretations. The last directive on data requires either the contractor or the public agency to provide data. Mr. Hernandez responded that data could be obtained from firms as well. In terms of expertise versus experience, it speaks to both.

Ms. Berntsen pointed out that existing law requires state agencies and educational institutions to track and report percentages of certified firms. Additionally, an existing law directs the increased use of small businesses. Certified firms are small businesses. There is existing direction to help guide the process.

Ms. Keith referred to the statute's criteria for certification and indicated she would support the proposal if submitted as a legislative amendment to the statute. She asked the Board to consider seeking advice from the Attorney General's (AG) Office for a second opinion, as she could support the proposal if the AG verified the directives were within the scope PRC considers when certifying an agency.

Mr. Lemos referred to the letter from the Minority Business Advisory Council (MBAC). Although appreciative of some of the comments, the conversation speaks to what the organization has been hearing for the last 20 years since I-200. When there is an effort and a push from elected officials to do something about the gross inequity of public contracting, the organization is told, "Well, we can't find them or, can we use these other (large minority) companies?" The idea is to collect the data and ensure that those contractors and agencies participating are reintroduced to the law and requirements to provide the data. The request is for the Board to take seriously the existing statute. Sometimes, the Board forgets that the taxpayers want Design-Bid-Build. The authority granted to the Board was to protect the taxpayer. Minority businesses are taxpayers and they are not being protected. There is no value added to alternative public works for the minority community if companies are not included. The only reason for using alternative public works is to benefit the taxpayer. He asked the Board to review the statute, as that should provide the Board with the authority to include inclusion. However, the request is for data. The hope is that over time, data will help identify problems. The request is to collect data because it sends a good message and aligns with Governor Inslee's request. It is important for public bodies to do the right thing and then let the community decide how to use the information. Lacking data enables legislators to

rely on agencies attesting that there are an insufficient number of smaller businesses and inclusion is fine. There is a reason why the state created OMWBE and the Board should be supporting that agency in doing its job.

Ms. Keith said she could support the motion if the Board issued a policy requiring public bodies to submit the four directives as part of the application to enable the Board to receive the data. The issue is the PRC review as it implies the PRC could approve or deny a certification decision on a factor that is not in the statute. However, if the Board issues a policy requiring public bodies to submit the information in the application, she would be supportive of the proposal. *She offered the latter as a friendly amendment.*

Mr. Maruska offered a second friendly amendment directing the PRC to present an implementation proposal to the Board.

Mr. Hernandez said he understands the motion would be the policy and directive to the PRC and that the four directives as previously identified are still within the motion regardless of how they are framed in the direction to the PRC.

The makers of the motion accepted the friendly amendment from Ms. Keith.

The makers of the motion accepted the friendly amendment from Mr. Maruska.

Chair Frare called for a vote on the amended motion.

Motion carried. Mr. Crawford opposed.

Mr. Crawford opposed, as he is not comfortable with forwarding a list of criteria to the PRC and asking the Committee how it plans to implement the criteria when there is no direction as to whether the items are criteria that could disqualify a public body from certification or recertification.

Mr. Hernandez restated the amended motion:

CPARB issues a policy requiring public bodies to submit and PRC to collect the following in the certification and recertification process:

- *Advertisement and solicitation requirements for inclusion plans*
- *Outreach and training and education efforts to minority and women-owned firms*
- *Contract language related to inclusion and outreach*
- *Amounts and percentages paid to minority, women, veteran, and small businesses, and*
- *Return to the Board to discuss how it plans to collect that information.*

Motion carried unanimously.

State Bank Legislation

Senator Hasegawa briefed members on a request for the Board to support the adoption of [SB 5464](#). The bill has been in various forums for quite some time. The State has a tremendous need to increase capacity to finance infrastructure. Currently, the State lacks capacity to finance all necessary infrastructure. The capital budget includes an accompanying \$2.7 million bond bill. Should the capital budget pass but the bond bill fails, the capital budget would not be funded. The bond bill requires a 60% approval to pass.

Senate Bill 5464 creates a publicly owned bank for the State of Washington. Currently, when the state collects tax revenue, the funds are deposited in a consolidated fund. The state bids for the bank service. Bank of America was the only vendor submitting a bid for the state's contract to manage the State General Fund. Essentially, the Bank of America is able to use the state's tax dollars and profit while the state loses control over its tax revenue. Should the state wish to bond or construct a project, the state must apply to Wall Street and pay a premium to use the state's tax dollars. The cost for a \$1 billion bond is approximately \$2 billion over the next 25-30 years, which also ties up \$2 billion of the state's capacity. Each year the state elects to bond, it ties up more of the funds and eventually leads to pyramiding to the point where the state reaches its debt capacity. At one point, the debt capacity limit was 9%, but has since been lowered by

initiative to approximately 7.5%. Not only is the state at the debt limit, the debt capacity continues to decrease leaving the state with no capacity to build and maintain infrastructure.

One model exists in the United States within the State of North Dakota, which has its own bank. The Bank of North Dakota has existed for nearly 100 years. Last year the bank recorded its 13th consecutive year of record profits for the people of North Dakota. Even during the recession, the Bank of Dakota was making profits because it was insulated from Wall Street. The Bank of Dakota has benefitted citizens by raising revenue for the state without raising taxes and increasing capacity to finance state projects.

Banks require approximately 10% of the total assets as cash as the core capital amount to establish the bank. The deposit enables leveraging of the core capital up to ten times. Should the State capitalize the bank with \$100 million as a depository for the \$42 billion cash flow every biennial that would leverage approximately \$1 billion in lending capacity. The State could leverage its financing capacity 10 times by having a state bank.

The concept is amazing with most countries using the model while the United States is unique in that it does not take advantage of the model. The Governor of New Jersey, who recently won their election, had the model as the cornerstone of his election platform because he intends to establish a public bank for New Jersey. Many cities are considering the option at the municipal level.

Senator Hasegawa thanked Senate Republicans for including a task force to study the model in the Senate Budget. As the State has reached its debt capacity, infrastructure need is now beyond the State's capacity. He thanked Senate Republicans for recognizing how the model offers a viable alternative. The task force has been established and continues to meet. Representation on the task force include industry and financial institution experts, with a goal to complete a feasibility study and prepare recommendations for the 2018 legislative session to create a state bank.

Senator Hasegawa asked for the Board's support and offered to provide presentations to any member's organization.

Mr. Crawford asked whether current state law allows cities to create banks. Senator Hasegawa replied that there are conflicting opinions. He believes it is possible while others argue that the State does not allow cities to create banks.

Senator Warnick said she believes it depends on the size of the city and debt capacity.

Mr. Thompson asked about the extent of the administrative structure created for a state bank. Senator Hasegawa said it likely would be smaller and would streamline current government as bonding and construction expertise exists in many agencies while a state bank would enable the consolidation of that expertise in one agency.

Public-Private Partnership Update

Representative Buys reported the Board requested moving forward to draft legislative language developed in coordination with the Public-Private Partnership Committee (P3) for P3 language for the state. The proposal involving many stakeholders was reviewed by legislative staff for creation of the draft. He asked the Board to provide feedback for possible addition prior to producing a final blue sheet to develop a bill draft document to introduce to the Legislature.

The Board's previous discussion also included a request to review the proposal with the Treasurer's Office because of financing language. The Treasurer's Office has been contacted and several individuals in the Treasurer's Office are reviewing the draft. The Transportation Commission Office also received a copy of the draft for review, as well as to two members from Washington State Department of Transportation (WSDOT) involved in P3 projects for their review and comments.

The draft is pending review by those different agencies with plans to delay any additional revisions to receive input from the Board for the Board's final review in December prior to introducing the bill the first week of the legislative session beginning on January 8th.

Senator Hasegawa asked about the impetus for the modifications because according to the information the current process is underutilized. Representative Buys affirmed that P3 has not been utilized in the state.

Mr. Thompson explained that the current WSDOT statute is underutilized for a number of reasons. Initial legislation was passed over 20 years ago and the process has a number of hoops requiring concessionaries not to expend any significant amount of money without some certainty that the P3 project would be completed. The current effort and the proposed legislation include the PRC and CPARB involved in the initial and final determination for using the P3 method.

Mr. Maruska added that the current statute has a fairly limited scope in terms of agencies allowed to use P3. Mr. Thompson added that the scope was a feature of the review because of the number of jurisdictions considering wastewater treatment plants, schools, and other types of projects beyond infrastructure projects. The Senate Transportation Committee is currently evaluating WSDOT's statute. Last year, [SB 5033](#) and this proposal were offered to demonstrate the chronology and the context of the proposed legislation that was lacking in the original legislation. Language in the proposed P3 legislation is stronger for requirements for the use of small businesses and DBE's than current statutes for DB and GC/CM. The proposal also complies closely with Mr. Hernandez's request of the Board. Additionally, other submittals of P3 is likely possible by other organizations. The proposal is an opportunity for the Board to influence P3 legislation.

Representative Buys said the next step at this point is to move forward with the legislation. He asked to include the proposal on the December agenda to approve moving forward as a bill with members testifying in support of the bill on behalf of CPARB.

Chair Frare asked members to review the draft language and provide feedback as soon as possible for inclusion on the December agenda to move forward.

Representative Buys left the meeting to attend a legislative committee meeting.

JLARC RECOMMENDATION STATUS – DATA COLLECTION SYSTEM – Information

Chair Frare referred members to a letter he authored to the Joint Legislative Audit and Review Committee (JLARC) along with a report.

Nancy Deakins advised that during JLARC's Alternative Public Works Sunset Review, JLARC forwarded some recommendations to CPARB. Public bodies receiving recommendations from JLARC need to respond on the status of the recommendations until completed. The first recommendation centered on public bodies using GC/CM obtaining information on project subcontract awards and payments and providing a final project report on their GC/CM subcontracting to CPARB. CPARB's response indicated that in November 2015, CPARB determined and approved what project data would be meaningful to collect and to assist CPARB in making policy recommendations to the Legislature, which includes GC/CM subcontracting information. In support of the proposal, DES has worked with the University of Washington to develop and host an online data collection system. The system was anticipated to online in spring 2017. As CPARB depends on the capital budget for its funding, completion and implementation of the online data collection system will resume when the capital budget is passed and there is adequate funding to support CPARB activities.

The response to JLARC's second recommendation that CPARB should refocus its efforts and limited resources on collecting information that would readily assist the Board in developing recommendations to improve public works delivery methods, CPARB approved project data to collect that would assist CPARB in making policy recommendations to the Legislature. Until a capital budget is adopted, the data collection system will not be available online.

Chair Frare requested concurrence that the information is accurate and transparent for efforts on data collection.

Mr. Maruska noted that there were several other reports previously submitted addressing other JLARC recommendations. Ms. Deakins offered to provide the reports to any member interested in receiving a copy.

Robert Maruska moved, seconded by Chair Frare, to approve the letter and report as presented. Motion carried unanimously.

RESPONSIBLE BIDDER GUIDELINES – Update & Action

Ms. Deakins reported legislation for bidder responsibility was proposed by CPARB in 2007 and subsequently adopted. With the passage of other legislation over the years, the guidelines require updating. She reviewed a summary of the proposed changes:

1. Updated website links for CPARB and RCW throughout.
2. Removed or not outdated statues, such as out-of-state prefabrication reporting element (*effective through 2013*).
3. Addition of new law and suggested bid document language for new mandatory responsibility criteria to address willful violation of wage payments by prime contractor and subcontractors [HB 5301](#), [RCW 39.04.350](#) (1) (g) and (2).
4. Updated references to the paragraphs in 39.04.350 as paragraph (2) was added, which changed number for paragraphs (3) and (4).

Talia Baker added that the Department of Revenue is no longer reporting delinquent taxes because of confidentiality laws.

Mr. Kuruvilla shared that he received an email from Kristina Nelson with the Washington Chapter of the American Public Works Association (APWA) expressing concerns about the lack of a listing of potential bidders on the delinquent tax list.

Mr. Hernandez said that he understands the owner is asking a contractor to certify some specific requirement. Mr. Kuruvilla said he believes that the county was able to review the list and if the contractor was included on the list, it was easier for the county to invalidate the contractor. Eliminating the list adds more process for public owners, which is the concern expressed by Ms. Nelson.

Ms. Deakins noted that she did not address the change by the Department of Revenue within the documentation. However, the supplemental responsibility criteria suggest a way for public bodies to include delinquent state taxes as supplemental criteria in bid documents to evaluate contractors. Because the list is no longer available from the Department of Revenue, she recommended including similar language included for the wage theft form for the contractor to submit a certification that they have no tax delinquency. She suggested including that recommendation within the summary of proposed changes.

Senator Hasegawa questioned whether the proposed changes were prompted by a mandate from the Legislature. Chair Frare affirmed the Legislature adopted HB 5301 mandating some changes for bidder responsibility.

Ms. Deakins explained that HB 5301 addresses wage theft violations and is now mandatory criteria for all public bodies awarding public works contracts to require contractors to certify they have not violated any wage laws by providing a certification statement to that affect before the public body awards the contract. The tax listing was not a component of the bill. However, the tax element was included in the supplemental bidder responsibility criteria developed by the committee. The committee vetted the criteria for public owners to include as supplemental bidder responsibility criteria when evaluating contractors.

Mr. Maruska asked whether the updates only pertained to those that were statutorily changed rather than an updating other provisions other than the tax, which was addressed because the Department of Revenue no longer publishes the list. Ms. Deakins affirmed that statutory changes were the primary changes other than some edits for updating links and references.

Chair Frare added that the proposed changes were prompted because of recent legislation and administrative changes to the document.

Robert Maruska moved, seconded by Santosh Kuruvilla to accept the changes as proposed with the inclusion of the modification of the tax list language. Motion carried unanimously.

Chair Frare recessed the meeting at 10:10 a.m. to 10:24 a.m. for a break.

Chair Frare adjusted the agenda moving the PRC Report to follow information and action on Design-Build Best Practices.

DESIGN-BUILD BEST PRACTICES - GUIDELINES – Information & Action

Walter Schacht reported at the last meeting, the Board received a presentation on the draft Design-Build Best Practices Guidelines with a recommendation to approve the Guidelines at the next meeting. The Design-Build Best Practices Committee recommends the Board approve the Guidelines.

The Committee created two versions of the Guidelines. One is an online interactive version and the second is a Word document. The online version was reviewed to ensure accessibility. The proposal is to adopt the online version as the official Guidelines because the version is user-friendly while retaining the Word document in response to the 2015 legislative proviso.

Mr. Schacht said Ms. Berntsen proposed some minor changes to the chapter on Emerging Competition. The changes have not been incorporated within the draft and he and Ms. Berntsen plan to draft some language. Some of the issues surround the challenges disadvantaged businesses have in terms of knowledge and experience to successfully bid a project. The intent of the language is to state the battle disadvantaged businesses have in getting work in Design-Build. Language in the current draft that speaks to uniformity in defining “disadvantaged business” requires some additional clarity versus OMWBE standards versus federal standards, versus SES standards, versus municipal standards. Ms. Berntsen also recommended adopting comparable language existing in [SB 5631](#), although the Board agreed to remove the language during its discussion. Alternatively, language would be added referring readers to CPARB’s policy for certified agencies. Additionally, language should be included stipulating the importance of project applicants understanding the language and that everyone involved in Design-Build should reach out to the broad community as part of the Board’s approach to provide notice and to ensure the community is aware of contracting opportunities. Ms. Berntsen is also seeking more specificity in terms of reducing the constraints on the participation of new firms to Design-Build. There are different sets of constraints for design professionals than there are for trade partners and subcontractors. All the recommendations are consistent with the work of the committee. He recommended adopting the proposed recommendations as part of the adoption of the Guidelines.

Ms. Schacht recognized Oliva Yang who served as Co-Chair of the committee for the last 2-1/2 years, as well as Steve Crawford and Nick Datz from Sound Transit, who was recently appointed to the committee but served as Linneth Riley-Hall’s proxy during meetings.

Ms. Yang expressed appreciation for the collaboration as it speaks to the true spirit of Design-Build with owners, designers, and contractors working together. The more than two years of rigorous debate in the midst of the practice changing was remarkable. Many owners believe in Design-Build because collaboration is the most efficient and the most transparent. She was proud to be part of the effort.

Nick Datz thanked the Board for appointing him to the committee. The meetings included great dialogue with all parties involved. The intent was to develop some best practices and guidelines to help agencies that do not utilize Design-Build as often as other owners. The Guidelines represent a good starting point. The Guidelines were recently used for Design-Build training and received positive feedback.

Mr. Crawford commented that the work represented a huge effort by many people. Mr. Schacht and Ms. Yang pulled much of the detail together over the last 2-1/2 years. The document will be very helpful and useful for new users to Design-Build as the delivery method is growing in interest by owners who have never completed a Design-Build project. The effort was rewarding and an enriching process. The Guidelines will help to ensure Design-Build continues to be a successful alternative method. The Guidelines will also assist in increasing awareness of the issues and concerns that different segments of the design and construction community have for using Design-Build.

Mr. Schacht said he believes Washington may be the only state that has published best practices guidelines for Design-Build. The first AGC Design-Build Workshop was held last month. The next workshop will likely be scheduled in the spring. The workshop was at capacity with 70 attendees and 20 individuals on a waitlist. The workshop was not advertised or marketed as many people learned about the workshop quickly. Attendees ranged from experienced practitioners to no experience in Design-Build. The workshop featured nine presenters. AGC is collating the comment cards from participants, which will be reviewed during the planning for the next workshop. It is likely the workshop will be hosted several times a year.

Ms. Yang remarked that as everyone becomes aware of best practices, the likelihood of harm to others is lessened.

Mr. Schacht cited three recommendations for the implementation and continuing development of the Design-Build Best Practices Guidelines:

- The guidelines should be reviewed by agencies applying to the Project Review Committee for either project approval or agency certification. The PRC application and review process should refer agencies to the guidelines and serve as a checklist to demonstrate the public body is prepared to administer the Design-Build procedures.
- CPARB should collect case studies on the use of Design-Build. The case studies would provide a database and lessons learned to inform future procurements and maintain the relevancy of the guidelines.
- The guidelines should serve as a syllabus for an AGC Education Foundation course based on the successful format of the GC/CM course that is given several times each year.

Mr. Schacht shared that he spoke with PRC's Rustin Hall and Janice Zahn about incorporating the Guidelines within the PRC review process and received positive feedback.

Mr. Kuruvilla complimented the high quality work and acknowledged the value of the document. He recommended following up at least once a year to maintain the conversation through updates to the document as the delivery method and knowledge base evolves.

Mr. Maruska agreed as the Board's practice has been to dismiss a committee after fulfilling its charge. He is unclear as to how to keep the Guidelines relevant.

Mr. Schacht offered that Ms. Yang has suggested using the Education Foundation Workshop as the vehicle because it includes presentations and panelists. All presentation materials are provided by AGC. He supported the goal of updating the document once annually while acknowledging the difficulty of assembling the necessary support. Additionally, following the lead of Mr. Datz's editing of the Procurement Chapter, some time was spent near the end specifically correlating different provisions in the statute with the Best Practices Guidelines. He recommended that at this time, using the Education Foundation Workshop as the avenue for keeping the Guidelines relevant.

Mr. Thompson questioned the potential benefit of seeking a high level opinion from WSDOT on the Guidelines. Mr. Schacht said Mark Gaines representing WSDOT was involved on the committee. Mr. Thompson offered to contact Mr. Gaines and extend an invitation to review and provide feedback on the Guidelines.

Walter Schacht moved, seconded by Steve Crawford, to approve the Design-Build Best Practices Guidelines with the modifications recommended by Teresa Berntsen. Motion carried unanimously.

Honoraria – Information and Action

Mr. Schacht commented on his role as the Architects Representative on CPARB. Design-Build is transforming the nature of project delivery both in the state and nationally and relationships are changing dramatically as a result. Over three years ago, he received a phone call from engineers and architects in Spokane seeking help that led to the Washington Architect & Engineer's Legislative Council (AELC) White Paper, which led to the formation of the Design-Build Best Practices Committee and the development of the Guidelines. Four key issues motivated design professionals and AELC to author the original White Paper: the changing role of the design professional, the ability of agencies to be prepared and execute Design-Build contracts, challenges to compete, and the cost and risk to compete. With the Guidelines, the industry depends on the goodwill of agencies to utilize them and follow them since there are no requirements to do so. He questioned whether there has been a change in the course of two and half years of committee dialogue. The role of design professionals remains a significant issue as the design consultant was previously the prime consultants and now have become the subcontractor. The work of a design professional includes more Design-Build projects because of the focus of

work on public works and higher education. The role of the design professional has changed significantly and the voice at the table has also changed. He relies on the goodwill of agency heads and their respect for designers to keep designers involved. Many agency heads are architects by training and understand the issue. He remains concerned about the ability to draw the best of what design professionals and engineers can bring to the table in terms of strategic thinking and asking the right questions. Agency preparedness remains a challenge as well as with individuals within agencies who execute projects. The issues and challenges to compete have not disappeared nor will they disappear. Agency leaders have indicated a desire to include the industry. However, many RFQs and RFPs include a laundry list of requirements whereby if the firm has not completed five Design-Build projects of a specific scale in the last five years, the firm is deemed to be not competitive. He challenged agency leaders to stop and determine that if they are unable to qualify design professionals, contractors, and subcontractors on the basis of their skills and abilities demonstrated previously as opposed to a stipulated number of completed Design-Build projects with a specific partner, the consequence will be only a few firms receiving the work.

Finally, there is some optimistic belief within the design industry that as a result of the committee's work there has been a significant move away from design and price competition (Traditional Design-Build) toward Progressive procurements. More agencies are procuring Progressive Design-Build (Progressive DB). The design community is highly appreciative of the move to Progressive DB understanding that it is not the right solution for every project but rather a tool in the toolbox. However, Progressive DB reduces the cost and risk to compete and gives the design professional a greater opportunity to participate in the dialogue. Together with the four issues in the white paper and the release of the Guidelines, it is hopeful there will be a difference.

Mr. Schacht referred members to a letter to the AG. At the last meeting, he asked Chair Frare to consider forwarding a letter to the AG for an opinion on three questions:

1. Are honoraria required for all Design-Build procurements? Currently, a number of Design-Build procurements do not include any honoraria when the project is Progressive DB.
2. How would CPARB or the PRC know that the agency has considered the level of effort with respect to the honoraria?
3. What is the relationship between design fees and Design-Build procurements and the statutes on procuring architectural/engineering service (*which are basically a qualifications-based selection with a negotiated fee*)?

A draft of the letter was only recently forwarded to Chair Frare because of other tasks related to completing the Design-Build Best Practices Guidelines and some data collection. Numerous agencies provided information on how they calculate honoraria. For Progressive DB, some agencies offer no honoraria.

Chair Frare advised that he has not forwarded the letter to the AG because of other events. He plans to send the letter within the next day.

Mr. Maruska asked whether the request is for a formal AG opinion or an informal opinion. Chair Frare suggested seeking an informal opinion as they are quicker to receive and less rigid.

Mr. Maruska asked whether the request to the AG would impact available funds. Chair Frare advised that the request would be funded by DES.

Chair Frare shared that DES has moved towards Progressive DB because of the benefits the contracting mechanism provides. The integrated design process is a huge factor in providing innovation and opportunity for the agency to be involved in design decisions, as well as the schedule enabling projects to be under construction contract quickly saving time and money.

Mr. Schacht said the submission of the questions surrounding honoraria was to provide clarity of language in the statute. In most cases, architects would be okay with receiving no honoraria for a typical progressive procurement rather than complete a design and price competition, as most believe their expertise is utilized better at lower risk. The architectural

community is not seeking significant honoraria for progressive procurements, the question is what the statute requires as it stipulates an honoraria is required. Another provision in the statute that is problematic relative to progressive are the RFP requirements in [RCW 39.10.330](#), which are based on a design and price competition for a laundry list of items. At some point, it is important to understand that the design community is at odds with the statute and that the Board might want to consider revising the statute, as well as how a Progressive DB honoraria might be different dependent upon the level of deliverables.

Chair Frare moved, seconded by Robert Maruska, to decommission the Design-Build Best Practices Commission. Motion carried unanimously.

PROJECT REVIEW COMMITTEE – Information

September 28, 2017 Meeting

Rustin Hall, Chair of the PRC provided the report. A full quorum of the committee met on September 28, 2017 for the election of the Vice Chair with the recent resignation of Jon Lebo who was recently elected to serve as Vice Chair. Two candidates submitted their qualifications and nominations – Janice Zahn, Port of Seattle representing Public Owners, and Jim Dugan, Parametrix, representing Construction Manager. Ms. Zhan received the majority vote and was elected to serve as Vice Chair.

Members reviewed updates to the bylaws and approved an amended motion to accept the proposed revisions with final language to be executed for future consent agenda approval.

A number of changes are required to PRC applications and scoring sheets to update references and other housekeeping changes. One item of focus for action later in the month is the 20-day public notice provision, which has been problematic and created some delays in PRC meetings because of the inability to publish announcement in outlying areas. A special session was held in October for the City of Seattle because of the issue. To avoid future instances, members agreed to change the date of the application deadline to ensure ample time for publication of the meeting to outlying areas.

Members welcomed new member Amy Engle, with the University of Washington replacing Jon Lebo.

Talia Baker was recognized and thanked for her service in support of the PRC.

Members participated in three project application panels:

1. **Einstein Kellogg Middle School Replacement – GC/CM** – Approved for the Shoreline School District. The project is an on-site replacement of the district’s two middle schools on occupied sites with an aggressive schedule. Additional GC/CM expertise will be provided by Parametrix, Perkins Coie, Mahlum Architects, and Integrus Architecture.
2. **Olympia Headquarters Office Building Replacement – Design-Build** – Approved for the Washington State School Director’s Association. The project is an on-site replacement of an existing office building with a project budget of \$2.6 million. The project was funded through internal association set-asides. Required Design-Build experience for the team will be provided by Olympic Associates, Perkins Coie, and DLR Architects.
3. **New Resident Hall – Design-Build** – Approved for Central Washington University. The project is construction of a new 400-bed, 119,000 square foot residence hall on a greenfield site. The project is funded by special revenue bonds. Required Design-Build experience would be provided by DES representatives.

Recruitment/Appointments

Ahmad Qayoumia representing the Design-Engineer position has apparently left his employment with the City of Pasco but provided no notice of his resignation to PRC. His position will be added to the recruitment of the vacant position of Owner – Public Hospitals previously filled by Darrin Gillis.

October 10, 2017 – Special Session

The PRC held a special session to consider the Boundary Dam Hydroelectric Units 51, 52, and 54 Rehabilitation Design-Build application from the City of Seattle/Seattle City Light. The panel approved the project consisting of the replacement of three large generators originally installed in the last 60s that are reaching the end of their service lives.

Each generator is unique in design and subsequent renovation with few companies available to perform the specialized work. Additional Design-Build expertise or the project will be provided by Robynne Parkinson and engineering assistance by Karen Graham of HDR.

Mr. Hall reported John Palewicz with the University of Washington is retiring and has requested a review of his eligibility to continue serving on the PRC through July 2018. The same situation applies to Yelena Semenova with DES who assumed a different position within the agency.

Ms. Deakins reported Mr. Palewicz is filling a General Public Owner position.

Mr. Maruska commented on a similar situation involving a representative on the PRC. There was no requirement that the individual be either employed or tied to the group they were representing as long as the constituents supported the appointment.

Mr. Schacht asked whether Mr. Palewicz's contract employment with the University satisfies his ongoing involvement as a Public Owner Representative. Chair Frare said he believes so. Mr. Maruska added that there is no requirement for Mr. Palewicz to be employed by a general public owner.

Walter Schacht moved, seconded by Chair Frare, to authorize the continuance of John Palewicz's service as a General Public Owner Representative on the PRC. Motion carried unanimously.

Chair Frare explained that Ms. Semenova was one of many staff members who was affected by the agency's recent reduction in force and was transferred to a different division within DES as a reimbursable position requiring billing of hours and meeting a minimum threshold for productivity and billable hours. It would be difficult for the program to allow Ms. Semenova to continue her role on the PRC. Because of the uncertainty with the capital budget, should the Legislature pass a budget in early January, he would not advise removing Ms. Semenova at this time. However, if adoption of the capital budget is delayed, Ms. Semenova should submit a resignation from the PRC.

OTHER BUSINESS

Ms. Deakins reported on recruitment action needs for the Public Hospitals and the Design – Engineer positions on the PRC.

Ms. Baker said the deadline for applications is November 20. If DES receives any applications, the applications can be provided to members for review during the December 14 meeting, time permitting. If no applications are received, another recruitment process will be initiated.

Ms. Deakins referred to one Higher Education vacancy on the CPARB and the expiring term of Charles Horn. Representatives of Higher Education have met to discuss submitting an application to the Governor's Office.

Jerry Vanderwood, AGC, presented information stemming from the Brightwater court decision. The court decision altered the expected allocation risk on construction projects. He cited the example of the court case involving King County when it hired a contractor at the Brightwater facility. King County specified a certain tunnel boring machine, which did not work thus creating delays and the termination of the contractor. The contractor countersued and the court ruled in favor of King County. The court's decision has broader applications of concern by the construction community as it pertains to implied warranty or the Spearin Doctrine whereby owners providing plans and specifications warrant the adequacy of their plans and specifications. He cited several of the court's reasons for the ruling. Mr. Vanderwood reviewed the legislative language proposed by AGC.

Mr. Maruska asked about the intent of the proposed language to satisfy the concerns. Mr. Vanderwood explained that the language makes it clear that the owner cannot shift the risk for the constructability of methods that the owner specifies in its plans.

Mr. Frare commented that an owner has the option of providing either a prescriptive spec or a performance spec. He described a compaction spec as an example.

Mr. Maruska said he would be willing to circulate the proposal to his constituents.

Mr. Kuruvilla suggested evaluating the proposed language in the context of WSDOT's rulebook. In terms of prescriptive versus performance specs, there is some language in the rulebook and it would be beneficial to vet the language.

Mr. Vanderwood said the organization plans to speak to more public owners and identify a sponsor to move forward with legislation in 2018.

PROPOSED MEETING DATES FOR 2018 - Action

Chair Frare reported the November and December meeting dates create difficulty for staff to have adequate time to prepare for the December meeting. The recommendation changes the meeting schedule by changing the schedule to meet in August and October rather than September and November to afford a two-month period between meetings.

Mr. Maruska cautioned that many members schedule August vacations, which is why the September meeting was scheduled.

Members discussed potential vacation conflicts and offered alternative suggestions to meet in September and October rather than August and November.

Chair Frare moved, seconded by Robert Maruska, to schedule the 2018 meeting dates as:

- *February 8,*
- *May 10,*
- *September 13,*
- *October 11, and*
- *December 13.*

Motion carried unanimously.

DRAFT MEETING AGENDA

The draft December meeting agenda includes:

- Action on Public-Private Partnerships
- Consideration of State Bank Legislation
- Open Mike for proposed legislation
- JOC Evaluation Committee Action on proposed legislation
- PRC Report – Project Reviews, Review of Bylaws, Vacancy Update
- Small Works Roster to match JOC
- Increase in JOC Limits

ADJOURNMENT

Robert Maruska moved, seconded by Andy Thompson, to adjourn the meeting at 11:44 a.m. Motion carried unanimously.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services
Kelsey Beck, City of Seattle
James Crandall, Senate
Nick Datz, Sound Transit
Nancy Deakins, Enterprise Services
Amy Engel, University of Washington
James Evans, University of Washington
Valerie Gow, Puget Sound Meeting Services

Rustin Hall, ALSC Architects/PRC (Telecon)
Taehee Horn, Sound Transit
Frank Lemos, Minority Business Advisory Council
Don Luford, CMAA
James Lynch, Ahlers & Cressman
Jimmy Osborne, PNWRCC
Oliva Yang, University of Washington
Jerry Vanderwood, AGC