

CAPITAL PROJECTS ADVISORY REVIEW BOARD
Draft Minutes
1500 Jefferson – Presentation Room
Olympia, Washington
September 11, 2014

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Vince Campanella	General Contractors	Ed Kommers (Vice Chair)	Specialty Contractors
Christopher Hirst	Private Industry	Vacant	Senate (R)
Mark Riker	Construction Trades Labor	John Ahlers	Private Industry
Steven Crawford	School Districts	Rep. Vincent Buys	House (R)
William Frare	DES	Vacant	Engineers
Alexis Oliver	OMWBE		
Robert Maruska (Chair)	Washington Ports		
David Myers	Construction Trades Labor		
Senator Bob Hasegawa	Senate (D)		
Rep. Kathy Haigh	House (D)		
Helaine Honig	Cities		
Alan Nygaard	Higher Education		
Gary Rowe	Counties		
Ty Heim	Public Hospital Districts		
Walter Schacht	Architects		
Greg Fuller	Specialty Contractors		
Charles Horn	Insurance/Surety Industry		
Andrew Thompson	General Contractors		

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 9:01 a.m.

A meeting quorum was attained.

Everyone present provided self-introductions.

Chair Maruska welcomed and acknowledged new members Andrew Thompson, Greg Fuller, and Charles Horn.

Nancy Deakins reported on receiving notification from the Governor's Office of the resignation of Albert Shen in July. Staff is working with the Governor's Office for recruitment of the position.

Christopher Hirst arrived at the meeting.

Approve Agenda

The following item was requested for removal from the agenda:

- JOC Data Collection Report

Vince Campanella moved, seconded by Gary Rowe, to approve the agenda as amended. Motion carried.

Approve May 8, 2014 Meeting Minutes

A correction was requested to the minutes of May 8, 2014 changing “3P” to reflect “P3” on page 11.

Helaine Honig moved, seconded by Bill Frare, to approve the May 8, 2014 minutes as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Update on CPARB Operating Procedures

Chair Maruska reported the Board approved the Board’s Organization and Operation procedures in July 2008 under the guidelines of former Governor Gregoire. He introduced Linda Sullivan-Colglazier, legal counsel to the Board.

Ms. Sullivan-Colglazier said she was asked to provide guidance on continuation of a meeting after a meeting quorum is lost. After reviewing the Board’s operating documents, she discovered the Board never adopted bylaws, which typically are adopted by boards and commissions in addition to operating procedures. Within the bylaws, meeting bodies often adopt parliamentary rules and procedures governing meeting protocols. The Board currently operates under parliamentary guidelines although not specifically defined within the Board’s operational procedures. At its last meeting, the Board lost a quorum during the meeting. According to the Board’s operational procedures, a minimum of 10 of the 19 voting members must be present to conduct business and vote on actions. Based on a review of Robert’s Rules and the Governor’s handbook for meeting bodies, the guidance stipulates that when a quorum is lost, the meeting should be adjourned. The provision of “Quorum” within the Board’s operating procedures is ambiguous. She recommended assigning a subcommittee to research other bylaws and develop a set of bylaws for the Board’s review and consideration.

Chair Maruska said that one of the concerns pertained to continued Board discussion after the loss of a quorum and the ability for absent members to vote on subsequent action by reviewing the discussion within the meeting minutes. Ms. Sullivan-Colglazier said that based on her review of other authorities, once a quorum is lost, no business should be conducted by the Board. However, the Board could elect to continue the meeting for discussion purposes only. Lacking clear direction in the operational procedures, such action should be clearly defined.

Ms. Honig said it appears there is some ambiguity in the operating procedures, which should be clarified. Ms. Sullivan-Colglazier said most boards have bylaws and most have operating procedures. Boards typically adopt rules of parliamentary procedure, which provides the default for meeting rules. Bylaws are hierarchy over operating procedures.

Gary Rowe asked whether the Open Public Meetings Act would be a factor if the Board continued to have a discussion after adjourning the meeting because of the lack of a quorum. Ms. Sullivan-Colglazier said the Open Public Meetings Act applies during a public meeting that has attained a quorum. Additionally, training is available through the Attorney General’s Office on transparency, public records, and the Open Public Meetings Act. She encouraged members to review the online training videos. In terms of public records, it’s important that if members conduct the Board’s business using their personal electronic devices, those devices could be subject to public disclosure requests. The best policy is to use a flash drive for all work related to the Board to ensure personal computers are not subject to the rules of public disclosure.

David Myers arrived at the meeting.

Chair Maruska encouraged members to complete the online training to become better informed of their obligations as a Boardmember. Ms. Deakins referred to the link on the DES website to the training for new appointees. She offered to forward a link to all members and asked members to confirm their completion of the training.

Alan Nygaard moved, seconded by Vince Campanella, to direct the Chair to draft language amending the operating procedures allowing Board discussions to continue in the event of losing a meeting quorum with no action allowed.

Mr. Rowe spoke against the motion, as it's appropriate for the Board to consider drafting bylaws to address both issues.

Mr. Frare commented on the proposed motion to enable the Board to continue discussions in the event a meeting quorum is lost. Development of a set of bylaws could be drafted fairly quickly.

Christopher Hirst moved, seconded by Steve Crawford, to request legal counsel's review of the proposed amendment to ensure consistency. Motion carried.

The amended main motion was restated to direct the Chair to draft language in conjunction with the Attorney General's Office for amendments to the Operating Procedures for the CPARB to allow for continuation of meetings should the meeting lose a quorum; however, no action by the Board would be allowed.

Motion carried. Mr. Rowe opposed.

Alexis Oliver moved, seconded by Bill Frare, to establish a CPARB subcommittee working in conjunction with the Attorney General's Office to develop bylaws for the CPARB.

Dave Myers asked about the proposed scope of the bylaws.

Ms. Sullivan-Colglazier advised that at the last meeting, the Board lost its quorum and as follow up, she was asked to research options available to the Board. She asked to receive a copy of CPARB's bylaws. The Board operates under operating procedures and does not have a set of bylaws, which is contrary to her experience because most boards have bylaws and operating procedures. Boards and commissions typically adopt parliamentary rules, which are also recommended in the Governor's Handbook for Boards and Commissions.

Gary Rowe moved, seconded by David Myers, to develop the draft of the bylaws prior to the next Board meeting.

Mr. Crawford questioned why the formation of the Board didn't also include bylaws. Representative Haigh responded that the legislation established the Board to pursue the work during a time of uncertainty as to the longevity of the Board and funding availability. At that time, many important issues were under consideration and the Board struggled during the first several years to organize. Since passage of the sunset review, it's timely for the Board to consider developing bylaws.

Motion carried on the amendment to the motion.

Motion carried on the main amended motion.

Mr. Frare, Ms. Oliver, and Mr. Myers volunteered to serve on the subcommittee.

Alan Nygaard moved, seconded by Vince Campanella, to appoint Bob Maruska, Ed Kommers, Alexis Oliver, Bill Frare, and Dave Myers to the Bylaws Subcommittee with legal support provided by Ms. Sullivan-Colglazier and staff support provided by Nancy Deakins. Motion carried unanimously.

Project Review Committee

May & July Meetings

Linneth Riley-Hall, Chair, PRC, reported in May, members unanimously elected Curt Gimmestad with Absher Construction as Vice Chair.

PRC reviewed four applications in May:

1. The Lake Washington School District submitted a GC/CM certification application. Some concerns were shared about the school district lacking in-house GC/CM experience and using consultant to supplement experience to receive agency certification. PRC members thoroughly discussed the application and whether the agency should be allowed to use consultants for GC/CM or whether the school district should have in-house GC/CM experience. Subsequently, the application was denied with a close vote. A two-thirds majority was required to approve the application. Consequently, PRC is seeking guidance from the CPARB as to whether it's appropriate for agencies with minimal in-house GC/CM experience to utilize consultants to obtain agency certification. This is the first application the PRC has considered whereby an agency has hired consultants to demonstrate GC/CM experience.
2. The Edmonds School District submitted a GC/CM project application, which was approved.
3. The Evergreen State College submitted a GC/CM project application, which was approved.
4. Whidbey Island Public Hospital District submitted a GC/CM project application, which was approved.

At the July meeting, the PRC reviewed four applications. The Edmonds School District submitted an application for GC/CM agency certification. The PRC panel unanimously approved the certification.

Individual projects included the City of Walla Walla and Wenatchee School District's submittal of two GC/CM applications for two schools. All applications were approved unanimously.

The next PRC meeting is on September 25 to consider the following applications:

- University of Washington Design Build Re-certification
- Central Valley District GC/CM Evergreen Middle School Renovation/Addition
- Central Valley School District GC/CM Green Acre and Chester Elementary Schools Renovation/Addition

Chair Maruska asked whether PRC members expressed any preference for receiving guidance from the Board. Ms. Riley-Hall replied that members did not discuss how to receive the guidance. Chair Maruska questioned whether it would be reasonable to request the PRC to forward a recommendation for the Board to consider. Ms. Riley-Hall replied that the PRC members were split in their opinion. After extensive discussion, many members agreed consultants could supplement the agency while others believed the agency needed to stand alone and have in-house expertise. Chair Maruska asked the Board to consider whether to include a presentation by PRC on each perspective to help inform the Board about the issues.

Mr. Frare agreed it would be important for the Board to receive both viewpoints. He attended the PRC meeting. Members engaged in a very thoughtful and thorough discussion. Integral to the discussion are the differences in legislation in terms of whether it's an agency or project approval. Legislation for each is different.

Andy Thompson said as more public agencies use alternate public works delivery, it would create internal stresses within the agencies to deliver projects. The situation is a natural outgrowth of those circumstances. Members thoughtfully discussed whether a public body as a group has the capability versus a project. It would be beneficial for the PRC to review the pros and cons as it be helpful for the Board. However, as a contractor, there's more use of alternate delivery and that may require different considerations in terms of ensuring good project delivery that's in the best interests of the taxpayer.

Mr. Hirst asked about the outcome of the vote. Ms. Riley-Hall said the vote of 14-8 was in favor of approval. However, a super majority required two-thirds of the vote.

Chair Maruska invited comments from PRC members.

Tim Graybeal, Integrus Architecture, reported the request to the Board is for assistance in the assessing the PRC's decision to ensure its guidance to the agency was accurate. As the methodologies are used more frequently, the determination of the finer points of the interpretation would most likely occur again. He suggested that during the Board's discussion on restructuring and redefining some of the roles of the PRC, the Board also consider how to provide the feedback to the PRC as a function of the Board.

Dan Seydel, Platinum Group, LLC, commented that the issue has risen three times. His concern is ensuring that whomever participates on the Board and whatever guidance is communicated should include the acknowledgement that there will be adverse impacts as it relates to empowering an agency to utilize resources from private industry as a way to build capacity quickly. As President and CEO of the Entrepreneurial Institute of Washington, it would be a conflict not to support those opportunities to enable agencies to work with private industries to help empower public agencies. CPARB members should be mindful that if they participate in the decision-making, members should give consideration as to how decisions could adversely impact an agency's ability to ramp up important capital projects.

Mr. Crawford agreed the PRC deliberation was a spirited and lengthy discussion. Speaking from a school district's perspective, there are a number of school districts in the Puget Sound that have significant and ongoing construction programs with some districts electing to employ staff while others have elected to hire consultants for projects. In either situation, it's possible for changes to occur within the organization, which might impact the district's ability to complete projects than a district that utilizes consultants. The issue is complex and is what necessitated PRC to seek guidance in establishing the proper procedures and process as it will continue to be an issue.

Representative Haigh questioned whether the decision against approving the application was due to the lack of specific provisions in law allowing for utilization of consultants. Mr. Crawford said he believes there was sufficient opinion that legislation, as currently written, required disapproval of the application. A good example was the project submittal by the Edmonds School District with school officials in attendance during the Lake Washington presentation and deliberation. The difference between the two project proposals pertained primarily to the Edmonds School District having in-house staff to manage projects while Lake Washington contracts with consultants. The application for Edmonds School District was approved while Lake Washington's application was denied.

Ms. Riley-Hall added that the denial was also because Lake Washington School District was not approved for GC/CM certification versus submittal of projects applications to the PRC.

Mr. Nygaard recommended including the discussion on the Board's November agenda.

Mr. Myers said it appears that the request by the Lake Washington School District was for GC/CM certification using consultant expertise rather than in-house expertise, which is different from receiving a denial of a project. As part of the Board's pending discussion, it's important to understand the difference.

Mr. Crawford added that Lake Washington School District has completed a number of GC/CM projects and the district has experience in that type of alternative delivery method but lacks in-house staff. Except for current legislative language, it's likely the district would have received approval for an individual project. However, not having in-house experience, the agency certification was denied.

Mr. Graybeal commented that the agency approval implies a specific permanence as opposed to individual project approvals. Legislative language is different for agency approval versus project approval. The question was whether the business model the school district employs of utilizing consultants to ramp up project support is the same in terms of permanence for having in-house expertise. There were varied opinions by PRC members. The issue has far-reaching impacts because it's about business models of school districts.

PRC Membership

Ms. Deakins distributed copies of PRC applicant information for all candidates. A number of vacancies were identified in the spring. Recruitment was opened in April with applications due by the end of July. With the departure of Eric Smith, two vacant positions are open for Higher Education.

Mr. Thompson suggested more time should be warranted to enable the Board to review and evaluate candidates. Mr. Myers agreed with the recommendation.

Ms. Deakins added that references are typically reviewed if an applicant fails to include information on alternative public works experience. Another issue not fully addressed is whether some current members with expiring terms were willing to continue serving. Some members have notified staff of their desire to remain on the PRC while other vacancies exist for Higher Education and DES. There are different circumstances for the vacancies ranging from expiration of terms or members leaving the area or retiring. PRC Bylaws enable continuation of a member serving until the position terms ends or the member has been reappointed.

Ms. Oliver asked about the extent of the recruitment outreach as it appears there are no nominees representing women or minority businesses and she did not recall receiving any notification to assist in recruitment efforts. Ms. Deakins said she's unsure of the recruitment outreach other than it was released through the Daily Journal of Commerce. She welcomed assistance from the OMWBE for future recruitment efforts.

Ms. Oliver agreed with the recommendation to defer action on the slate of candidates, as well as affording more time for additional recruitment.

Mr. Hirst recommended acting on the School District position as Mr. Crawford is well-known and is willing to serve another term.

Mr. Myers pointed out that it appears a general contractor applied for the Specialty Contractor position. He agreed additional of vetting of Mr. Crawford is unnecessary.

Mr. Frare spoke in support of DES applicant Yelena Semenova. He had announced the pending position vacancy during a number of project manager meetings. Ms. Semenova was the only employee expressing interest. Ms. Semenova is well-versed in alternative public works delivery.

Mr. Seydel said that as a member of PRC representing women and minority-owned businesses, he actively engaged in efforts to recruit women and minority businesses without success. However, there are qualified women and minority businesses across the state that might be willing to assist the OMWBE in additional outreach. He offered to remain in the position until additional recruitment is completed.

Ms. Riley-Hall said the extension of Mr. Seydel's position would assist the PRC as two other members have expiring terms. If those individuals remain in their respective position until the September meeting, deferral of the Board's selection should not be problematic for PRC panels to consider applications.

Mr. Rowe suggested the Board should take formal action to extend the terms of current appointees with expiring terms because PRC meetings can have significant impact on agencies. Ms. Riley-Hall reported Dan Chandler, former Vice Chair, submitted an application, and has indicated a willingness to continue serving. Kristin Betty representing Minority/Women Businesses has indicated a willingness to assist the PRC until the position can be filled.

Chair Maruska recommended reviewing the bylaws to affirm whether it's possible to extend terms temporarily.

Mr. Rowe said the statute stipulates four-year terms and it's likely the terms would not automatically extend without some formal action by the Board.

Gary Rowe moved, seconded by Walter Schacht, to extend PRC member terms of Dan Chandler, Dan Seydel, and Kristen Betty until such time the Board either reappoints or appoints new members to fill the three positions.

Ms. Riley-Hall noted current members applying for reappointment include Jim Burt, Steve Crawford, Shasta McKinley, Dan Seydel, and Dan Chandler. All are active participants in both PRC meetings and on the panels. All terms have expired.

Mr. Rowe said the intent of his motion is to extend the appointments of those members whose terms have expired and who are willing to serve until the position is filled.

The makers of the motion withdrew the motion.

Gary Rowe moved, seconded by Walter Schacht, to extend PRC member terms of Dan Chandler, Dan Seydel, Kristen Betty, Steve Crawford, and Shasta McKinley until such time the Board either reappoints or appoints new members to fill the positions. Motion carried unanimously.

Chris Hirst moved, seconded by Vince Campanella, to reappoint Steve Crawford to the PRC as the representative of Owner – School Districts. Motion carried unanimously.

Bill Frare moved, seconded by David Myers, to appoint Yelena Semenova to the PRC as the representative of Owner – State – DES. Motion carried unanimously.

Mr. Campanella commented that it would be helpful to identify which position the candidates are seeking for appointment or reappointment, especially when there is more than one position for industry representatives.

The meeting was recessed from 10:26 a.m. to 10:43 a.m. for a break.

Potential Committee & Working Groups

Progressive Design Build Performance Measures

Ms. Oliver reported Albert Shen was recently appointed by President Obama to serve as National Deputy Director of the Minority Business Development Agency, a division of the U.S. Department of Commerce. The OMWBE will continue to work closely with Mr. Shen on minority business development and international trade issues. Prior to his resignation, Mr. Shen expressed interest in continuing efforts on the Progressive Design Build Workgroup to initiate more data collection as the method is a new alternative delivery method for the state, as well as for municipalities, and its importance on how the delivery method impacts small businesses and minority-owned businesses. Mr. Shen is working on a framework for the workgroup and expressed a desire to continue his advocacy efforts to establish a workgroup as an information gathering unit to help inform the Board for future recommendations around the alternative delivery method.

Chair Maruska said the statute enables the Board to determine what data should be collected and how it's utilized for any type of delivery method. Data have been collected as part of the reauthorization. At the recommendation of the Joint Legislative Audit Review Committee (JLARC), the Board revised collection efforts to obtain more relevant and useful data. The Board has the ability to either establish a workgroup or review a proposal developed by interested members on the type of data collected for this delivery method.

Representative Haigh shared that when the Board first assigned subcommittees, a data collection subcommittee was developed and conversations evolved around the type of information that should be requested, how the information is solicited, and how to incentivize the delivery of information. Progress began to slow when funding was reduced and when members considered how data would be analyzed, reported, and presented in a format that's useful for the Board. At that time, the Board didn't have funding for those steps and it's still uncertain whether funding is available to continue those efforts to cultivate and present data in a format usable by the Board.

Chair Maruska said that currently, there is no efficient method to analyze data. When JLARC analyzed collected data, one of the challenges during that process was the realization that public works, particularly the alternatives, did not have much similarity in the types of projects to develop a baseline of commonality to analyze for comparison and conclusions. Currently, the Board has no resources dedicated for analysis of data, which should be a factor of consideration in terms of what type of data should be analyzed or monitored and what data are appropriate for that analysis. He suggested the Board consider options of either creating a subcommittee to develop a proposal for the Board or members could voluntarily meet and develop a proposal without the formality of assigning a subcommittee.

Representative Haigh offered the option of following up with the JLARC to receive some direction on data gaps that should be collected. Should the Board agree to move forward with data collection it's necessary to seek funding approval from the Legislature. She offered to assist on a funding proposal for data collection for a two-year period.

Mr. Thompson asked whether the formation of a subcommittee is specific to the Progressive Design Build or for data collection as a whole. Chair Maruska said the topic is specific to Progressive Design Build as it is a new alternative public works delivery method. Much analysis and discussion have been completed on traditional methods.

Ms. Oliver asked about the makeup of the subcommittee and the opportunity to appoint other individuals versus members only. Chair Maruska advised that the establishment of a subcommittee is a formal structure, which generally requires a quorum whereas a workgroup is a different format accomplishing the same objective in a different way. Ms. Oliver said she believes the Board previously discussed establishing a

subcommittee; however, it may be preferable to establish a workgroup to develop a proposal for the Board's consideration.

Mr. Rowe questioned the type of performance measures to identify if the alternative is a new delivery method. He questioned the task of the workgroup because it's unlikely that those utilizing Progressive Design Build would be able to provide much data. Chair Maruska suggested it likely entails seeking other entities outside the state that have used the delivery method and perhaps polling those entities to identify some performance measures. The intent is establishing a framework of data the Board would like to have as projects move forward.

Chair Maruska summarized the discussion as Ms. Oliver leading the effort to establish an informal workgroup to develop a proposal and provide an update on progress at the November meeting. Mr. Nygaard offered to participate in the workgroup. Chair Maruska offered to refer a Port representative to serve on the workgroup.

Heavy Civil Best Management Practices

Chair Maruska said the topic was prompted as the Board reviewed legislation in defining Heavy Civil, as well as other issues, such as best management practices that the Board could develop.

Ms. Riley-Hall said the Heavy Civil Subcommittee was successful in pursuing the passage of Heavy Civil legislation. During meetings of the subcommittees, continued concerns evolved around how to provide guidance to all agencies to ensure consistency or understanding of Heavy Civil and to ensure legislation remained intact, as well as establishing uniform best practices. During the subcommittee's work, the focus was on passing legislation rather than on best practices, procedures, and resources. The focus of the work item is developing guidance procedures for agencies using Heavy Civil.

Chair Maruska asked for feedback as to whether the Board should develop guidelines to serve a need.

Mr. Nygaard pointed out that in other new forms of delivery methods the industry has done a good job of defining best practices. The industry is interested in achieving success and consequently public owners, contractors, and other stakeholders using Heavy Civil have employed best practices to ensure legislation is protected. The task might be unnecessary as public owners have their own interests to protect and most will ensure the legislation is used wisely and appropriately to ensure protection of the industry.

Ms. Riley-Hall added that she is aware of two public agencies utilizing Heavy Civil. The City of Oak Harbor received approval and Sound Transit has utilized Heavy Civil. Each agency is going through the process and would identify lessons learned and share them.

Chair Maruska asked about any outstanding issues surrounding PRC in terms of this specific delivery method. Ms. Riley-Hall said the PRC was able to have Mr. Thompson attend for the Oak Harbor project application, as he's a member of the Heavy Civil Committee. Legislation enables the PRC to utilize expertise to assist in the review of applications. Mr. Thompson as well as others on the review panel provided that expertise. The AGC GC/CM training included a Heavy Civil component during the last training session. The method is being addressed through training sponsored by AGC.

Mr. Thompson offered that data collection and information sharing for any delivery method affords an opportunity to provide a collection of information on the projects that could be shared with the larger community. It could be beneficial to consider how data collection could provide fundamental information online. He acknowledged the funding challenges with DES; however, in terms of the taxpayer and efficiencies and the inclusion of information, there could be a good opportunity without expending too much effort to

provide information to the public to build bridges and communicate performance measures. Data collection could help solve some of the challenges at the first tier followed by other concentrated efforts.

Chair Maruska suggested including time on the November meeting agenda for a discussion on data collection.

Mr. Hirst suggested including a brief history on data collection and JLARC's recommendations as well. Chair Maruska acknowledged the request.

Senator Hasegawa said one of the goals often overlooked are practices for reaching out and engaging, which could be included in data collection or some type of assembly of best management practices.

Chair Maruska said that based on input from the Board, action on the Heavy Civil best management practices is deferred at this time to enable the industry to continue developing and utilizing the delivery method.

Small Public Works Issues

Chair Maruska outlined the issue. During the 2012 session, legislation was introduced specific to ports. The bill was narrowly scoped for ports to address the issue of small public works in procurement methods. The bill was not structured to respond to the input the Board received from small public entities. The intent is addressing some of the concerns of the ports in a broader perspective for small public works. Other issues include bonding and the ability for smaller firms to secure bonding and completing the difficult procurement process. House Bill 1970 increased the limits for small works projects from \$2,500 to \$5,000 for limited public works. The proposed discussion is a comprehensive review of the issues rather than only addressing the needs of small public entities, and potential legislation to enhance competition and reduce risk while affording a more efficient process.

Mr. Myers questioned the desired outcome and the intent as he has concerns with recommending any legislation at this time because of the time required to work through some of the issues. Chair Maruska recommended creating a subcommittee to begin the conversation on all the issues.

Mr. Heim expressed interest in pursuing the discussion because time in market is becoming more critical because of public health issues and small works, which might be a solution. Any activity that might expedite that process would be of serious interest to hospital districts.

Representative Haigh asked for an update on the issues. Mr. Myers said the concern in the industry regarding the legislation is the elimination of the small works roster and the creation of flexibility for ports to hire any firm. The intent was for small ports to hire local; however, legislation didn't address small ports or local labor. The legislation essentially was a blank check for ports to hire any firm on a threshold that was increased significantly from the prior level. The industry was concerned about the lack of checks and balances.

Chair Maruska added that there is a large group of small entities unable to complete in-house projects requiring outsourcing of all projects. The projects might be of small dollar value with the local community having only one specialized trade to do the particular work.

Ginger Eagle, Washington Public Ports Association, added that the legislation did not eliminate the small works roster. It did, however make the process slightly easier for projects between \$5,000 and \$35,000.

Chris Hirst moved, seconded by Andrew Thompson, to appoint a Public Works Issues Subcommittee to study small public works issues as identified and other issues that could be addressed. Motion carried. Mr. Myers opposed.

Nancy Deakins noted that the issues are substantial and any legislation would likely not be ready for the next session.

Mr. Myers said his opposition was because he believes there are avenues the Board has traveled if changes are required in legislation; however, the Board is not the appropriate vehicle for this particular issue in his opinion.

Robert Maruska moved, seconded by Bill Frare, to appoint the following members to the Public Works Issues Subcommittee: Gary Rowe, Chris Hirst, Helaine Honig, Ty Heim, DES representative, Alexis Oliver, Mark Riker, Vince Campanella, Greg Fuller, Charles Horn, Bob Maruska, Larry Stevens, Dan Seydel, and a member from the National Association of Minority Contractors. Motion carried unanimously.

Life Cycle Study Follow-on Workgroup

Chair Maruska reported some follow-on work was identified in the Life Cycle Cost Analysis Report completed in December 2013.

Mr. Schacht suggested the Board should review the topics identified in the report for further evaluation moving forward. In parallel with the direction the Board received to study life cycle cost analysis in relationship to Design Build, the Governor issued Executive Order 13-03. The Board coordinated its efforts with the order; however, the order has a profound effect on the work of architects, engineers, and state agencies beginning in the 2015 session because of the requirement to implement the life cycle cost analysis tool (LCCT) for any new building. The tool is extremely comprehensive and extends evaluation beyond the Board's report that might not be of the greatest value to consider. The Life Cycle Cost Analysis Report from the CPARB endorsed the current process as yielding the largest benefits to the state in terms of understanding what decisions can be made and how life cycle cost analysis impacts those decisions. The LCCT developed by the Office of Financial Management (OFM) is currently in beta testing with a community college project. It's still unclear as to the CPARB's role. From his perspective, the new process organized by OFM will become effective in 2015 and project budgets are being updated for affected projects. Until an actual biennium of implementation and practice is completed, it will be difficult to evaluate.

Mr. Rowe asked whether the tool is used during the bidding and procurement process or during the design process.

Mr. Schacht said the LCCT begins during the pre-design phase. The tool is a spreadsheet based on uniform estimating protocols at level four during pre-design. The LCCT is employed at pre-design, during updates of schematics, updated DD, and updated CDs with a report on what was learned at the end of construction. The tool is used throughout all phases of a project.

Mr. Rowe asked whether the tool is part of the alternative bidding process or a design process. Mr. Schacht said the tool is applied to the materials and systems of the building design. Mr. Rowe asked whether it's considered an alternative bidding process or an alternative design process. Mr. Schacht said the tool is not used to evaluate the method of procurement.

Chair Maruska added that CPARB action resulted from a Legislature directive to complete the study. At this time, no further CPARB action is necessary despite the report's recommendation for additional follow-up.

Mr. Schacht suggested any additional work by the CPARB would extend beyond the Board's limited focus of alternative project delivery; however, it would have a profound effect on project delivery and it's a question for the future as to whether the Board should expand its focus to some extent to consider how to improve

project delivery for capital projects. He suggested some entity should pursue additional study considering the amount of current expertise on the Board and the number of beneficiaries.

Representative Haigh shared that the Chair of the Capital Budget Committee and the House pushed for the report. She supports the recommendation to learn from the tool; however producing another product of significance by the Board at this time is likely not possible, but it's worthy of future discussion with the Chair of the Capital Budget to ensure an understanding of the Board's position and why the decision was rendered.

Mr. Campanella added that the tool could have an impact on procurement in the future because the tool requires Design Build projects to form a team with expertise that may not have been necessary in the past. With the perception of risk transfer for performance guarantees, it would have a profound impact on teams and budgets. It may be referred to the CPARB in the future in terms of how projects are procured and whether the process is appropriate under current statutes.

Mr. Schacht said two GSA projects achieved one-year performance guarantees. It might be worthwhile at the end of the year, to review whether the two projects performed to the promised levels and whether the design builder received the withheld funds in the contract.

Chair Maruska recommended the Board continue to have Mr. Schacht monitor the issue. CPARB leadership will meet with the Chair of the Capital Budget in the House with additional follow-up provided at the November or December meeting.

Web Based Data Collection

Ms. Deakins recommended not pursuing any actions on any specific measures. A committee should be formed to identify the appropriate measures and to review the JLARC report and recommendations to obtain a better understanding of the request. She suggested deferring discussion to the November meeting.

Mr. Campanella pointed out that several members had formed a committee to work with DES on data collection, which wasn't related to Progressive Design Build. Chair Maruska indicated a review of previous minutes could ascertain if a committee had been appointed.

Public-Private Partnerships

Chair Maruska said public-private partnerships are an area of interest that the Board would likely want to evaluate. He recommended deferring the discussion to the November meeting.

Mr. Schacht expressed uncertainty as to whether a workgroup or committee would be needed. However, the time is right to reach out to the architect and engineering community to solicit feedback on how alternative project delivery is working and how it has affected the industry and solicit any recommendations they might offer for guidelines and best practices that would benefit the practice of Design Build and GC/CM. There is interest in the topic by the Washington Chapter of the American Institute of Architects as well as interest by the Architects and Engineers Legislative Council comprised of six different organizations of architects and engineers. He would prefer to pursue the issue under the purview of CPARB as an activity generated by the Board. The format of that work is unclear at this point, but it would be worthwhile to pursue in the next year.

Chair Maruska suggested developing a proposal for moving the item forward for consideration by the Board.

Representative Haigh recommended initiating the discussion through a presentation of the concerns and issues to the Board for additional direction on next steps. Mr. Schacht recommended delaying any presentation for several months to afford time to obtain feedback from the industry.

The Board agreed with the recommendation to delay the presentation until early next year. Mr. Schacht offered to develop a schedule of activities to help identify the target date for the presentation.

Ms. Deakins said the recommendation is within the realm of data collection from all stakeholders. The JLARC Report recommended compiling lessons learned and not necessarily continually producing hard data. The issue is identifying other things that the industry can learn from. Mr. Schacht agreed with that direction.

Legislation Considerations for 2015 Session

Chair Maruska invited officials from the City of Kent to share information about legislative concerns.

Doug Levy, Lobbyist, City of Kent, referred to a bill during the 2014 session that passed out of the House of Representatives but failed to pass the Legislature. The City of Kent expressed interest in considering the CPARB as a forum to discuss the legislation and possibly assisting with legislation or supporting/endorsing the bill.

The City of Kent is contending with an unintended consequence because under current law, cities the size of Kent, Bellevue, or Renton have the same ability to complete in-house work as cities the size of Sunnyside or Tonasket because of the passage of a 2009 bill. In 2002, the Legislature modified existing legislation to include a trigger of a \$90,000 limit for in-house versus bid limits for multi-craft projects. The amount was to be phased. In 2009, the Legislature passed HB 1847 establishing a bid limit of \$90,000 for multi-craft and a \$45,000 bid limit for single craft projects for first class cities with all other city classifications lumped into another category of a \$65,000 bid limit for multiple crafts and a \$40,000 bid limit for single trades. All cities previously under the \$90,000 threshold were suddenly in a lower category in the type of small projects completed in-house. Another oddity of the 2009 legislation was the 10% limitation in an annual budget in terms of what could be done in-house, which was removed. The two unintended consequences included lowering the limit and the removal of the percent annual limitation. The City of Kent, for example, would be limited to \$65,000 for projects involving local crafts but theoretically could complete 300 of those projects in a year. Kent discovered the issue during work with Sound Transit on a project adjacent to a commuter rail station. Both agencies desired to create some additional parking on a small gravel lot adjacent to the station for overflow parking. The City of Kent's legal department discovered the statute and determined that the amount of the work required for City in-house crews to complete couldn't be completed by the City if it conformed within the law. Subsequently, HB 2618 in the 2014 session was introduced in conjunction with conversations with the AGC, Mr. Myers, and other subcontractors. The electrical contractors did not support the legislation. Several attempts tried to adjust the bill to fix the unintended consequence and in the case of the \$90,000, to recognize time had lapsed years between 2002 and 2014 with project costs increasing substantially.

The legislation requires much more detail for the Board's review. However, the City wanted to present the issue to the CPARB, as the Board has the right combination of representation to consider the issue to determine if there is a consensus to help promote a remedy.

Allison Hellberg, Association of Washington Cities (AWC), reported the City of Kent presented the issue to AWC last year and AWC is interested in working with the CPARB on a resolution.

Mr. Levy added that there are 10 first class cities in the state. The City of Seattle is one. The classification is not based on population but rather on age of the municipality. The City of Aberdeen has considerably more authority on the public works front than the cities of Bellevue or Kent. The state has 11 second class cities, which are typically smaller municipalities, and 189 code cities that are affected by the limitations.

Chair Maruska said he had an opportunity to review the issue. Additional work is necessary to correct the intent of the legislature for different-sized municipalities; otherwise, the proposal would change all cities to the new limits.

Mr. Heim asked why the issue is only limited to cities as opposed to all public agencies. Chair Maruska explained that there are different limits for different types of projects. In 2009, the CPARB and other working groups spent time on reviewing adjustments, which resulted in the bill increasing the limits. Additional information is available in terms of the public agencies having particular trade limits with some agencies having no limits for self-performance.

Ms. Deakins said the bill was not vetted by CPARB, rather the cities identified as it as need and introduced the bill.

Mr. Levy added that Kent's Assistant City Attorney completed all the legal research and is willing to serve as a resource for the Board or assist in the work.

Chair Maruska invited feedback on other legislative interests.

Mr. Frare reported on interest by DES to sponsor three bills. The first is Job Order Contracting (JOC) and the circumstance of the agency running up to the limits on a regular basis. Currently, DES is authorized to complete 4 contracts worth \$4 million each year. Many times, DES nears the threshold after six to seven months into the year leaving no capacity to continue the year. The proposal increases the contracts to six worth \$6 million to provide competition across the state. DES manages contracts for many public agencies throughout the state and the CPARB is asked to support the legislation. He offered to distribute a briefing paper.

Another bill under consideration pertains to small business and small public works. Currently, the statute allows limited public works processes to target small business of up to \$35,000. The agency is considering increasing the amount to some undetermined amount to encompass all small works. The proposal has not been fully vetted.

The third proposal in conjunction with the Department of Labor and Industries is electronic payroll reporting for contractors in conjunction with a proposal by Senator Chase. Currently, contractors communicate certified payroll creating the situation of audits when issues are discovered. The proposal is proactive for record keeping and data analysis whereby contractors input certified payroll into an electronic system each month.

Mr. Campanella asked whether it would require mandatory certified payroll on projects as opposed to certified payroll when requested. Mr. Frare affirmed that it would.

Mr. Heim reported public hospital districts and school districts, along with other agencies would like to be included within the DES JOC discussion.

Chair Maruska referred to correspondence from John Ahlers on a bill related to venue. Mr. Rowe described the proposal concerning a conflict/lawsuit related to a contract. Many contracts include language that the claim must be pursued through the court of jurisdiction in the county of the project location. Legislation requires either the county where the project is located or in an adjacent county, but many times the contract is written specific to the county. The proposal would eliminate the contract language. Counties have opposed the proposal previously for a variety of reasons.

Arlen Harris, Government Relations Manager, DES, referred to the three DES bills. The department is submitting the JOC legislative request to the Governor's Office by October 1 to meet the deadline. The remaining requests are being vetted and likely would not be submitted to the Governor's Office by the October 1 deadline to be considered a DES agency request. DES hopes to vet the legislation with the CPARB over the next several months.

Ms. Oliver spoke to the agency exploring access improvements to capital and increasing the bonding exemption. Proposed legislation is on track for the submittal date for agency legislative requests. Currently, bonding limits are \$25,000 with a consideration to increase the exemption to \$100,000, which would apply to public works.

Ms. Honig added that the City of Seattle has an interest in increasing JOC limits for cities as well.

Mr. Nygaard reported that JLARC recently completed the review of the alternative public works process for critical patient care facilities and is recommending renewal of the legislation, which is scheduled to expire at the end of 2015.

Chair Maruska said JLARC's report recommended the CPARB should receive some follow-up reports. Mr. Nygaard said the bill requires reporting to CPARB, which has occurred over the years and would continue.

Representative Haigh noted the report was very well done and questions were well answered.

Senator Hasegawa said he was unable to attend the JLARC meeting and had requested information from JLARC about the report concerning subcontractors. No dollars have been awarded to DBEs or MBEs through the University of Washington. When the University first asked for the exemption from CPARB processes, he was concerned that DBE and MBE outreach would decline. He attempted to obtain data to support why the University would recommend that its outreach was sufficient. After reviewing some underlying data from the report, it appears the information lacked a response. Despite what he believes was not a sufficient attempt to engage the minority contracting community, there still was no participation. Subsequently, he's dismayed that JLARC did not include some kind of recommendation for an outcome-oriented process to engage the minority contracting community. He's concerned about recommending continuation of the exemption from other regulated contracting methods without ensuring that particular issue is addressed.

Representative Haigh said the issue was part of the conversation during the review. A training session was held with very low participation. However, there is no deadline and it can continue to be an ongoing effort to reach out to the minority community. More training can be offered to help people become certified for placement on the list.

Bob Armstead, NAMC, said his organization has expressed concerns about the same issue several times. The University has not made an effort and the organization would be happy to provide the information the University provides, which demonstrates it has not conducted outreach.

Frank Lemos, Washington Minority Business Advisory Council, commented on the difficulty of crediting or measuring an outreach program when the intent is not being met. Sending emails to DBEs and MBEs and receiving no participation but continuing to receive full recognition is not accountability. He questioned the authority for holding the University accountable. It's assumed that when JLARC conveyed outreach was insufficient it would serve as evidence of zero participation and that there would be other steps mandated to the University. He understands that outreach versus mandatory exclusions are issues of law, but awarding a grade

“A” to an outreach program achieving zero participation is asinine and he would like to know what the community can do.

Gary Rowe moved, seconded by Bill Frare, to refer all requests for CPARB endorsement related to alternative bidding to a Legislative Review Subcommittee formed by the CPARB for review and recommendation for presentation to the Board in November.

Mr. Myers spoke to concerns about the different requests presented to CPARB seeking support of legislation. He questioned the Board’s parameters or guidelines in terms of the type of legislation the Board considers. Chair Maruska said the Board has supported bills in the past from different sponsors requesting the CPARB’s endorsement. In those circumstances, the bill was presented to the Board and the Board voted. The Board has never established a committee for review of legislative requests for the Board’s consideration.

Representative Haigh shared that she has been approached on different bills. The Board has more expertise and time to listen to proposals. She relies on the Board for its discussions of bills. The Board’s review assists legislators, as most legislators do not have the expertise. Legislators have come to rely on the Board’s decisions in a major way. If there are concerns about the Board conducting that work, a discussion should occur.

Mr. Myers cautioned venturing beyond the Board’s process until a more thorough conversation is scheduled. Inherent within any CPARB recommendation is credibility. He expressed caution of endorsing another bill sponsored by another group because it could impact the credibility of the Board.

Chair Maruska said a smaller committee could present a proposal to the Board or the discussion could occur at the Board level. However, it’s likely a smaller committee would attract too many members. He agreed the true value is having the discussion and vetting the proposal.

Discussion ensued on the process, the motion, and the initial intent of the Board.

Chair Maruska recommended the issue should be considered by the entire Board and that any requests should be included on the agenda with applicable information forwarded to members prior to the meeting.

The makers of the motion withdrew their motion.

Ms. Honig left the meeting.

Dick Lutz asked about the potential of having a special meeting in October to discuss the issue of legislative requests to vet some of issues under discussion.

Chair Maruska reviewed options available to the Board and pending agenda topics for the November meeting. He suggested extending the November meeting time to 3 p.m. to afford time for discussion.

Vince Campanella moved, seconded by Bill Frare, to expand the November meeting agenda. Motion carried unanimously.

Chair Maruska affirmed he would develop the meeting agenda to reflect 9 a.m. to 3 p.m. with a lunch break.

Set Agenda Items for November Meeting

Agenda items for the November meeting included:

- JOC Data Collection
- PRC Update
- Deferred PRC Appointments
- Discussion on PRC/Agency certification/project approvals
- Update on Bylaws/Operating Rules
- Majority of time: Discussion on 2015 bills/future legislation

Adjournment

Robert Maruska moved, seconded by Gary Rowe to adjourn the meeting at 12:30 p.m. Motion carried unanimously.

Staff & Guests

Nancy Deakins, DES
Robin Hofstad, DES
Ginger Eagle, WPPA
Tom Gow, Puget Sound Meeting Services
Frank Lemos, WA Minority Bus. Adv. Council
Dick Lutz, Centennial Construction
Bob Armstead, NAMC
Dan Seydel, Platinum Group, LLC & PRC
Arlen Harris, DES

Linda Sullivan-Colglazier, OAG
Linneth Riley-Hall, PRC & Sound Transit
Tim Graybeal, Integrus Architecture & PRC
Larry Stevens, Spec Construction
Yelena Semenova, DES
Ginger Eagle, Washington Public Ports Association
Doug Levy, Lobbyist for City of Kent
Allison Hellberg, AWC

Robert Maruska, CPARB Chair

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services,