

Regular Meeting
CAPITAL PROJECTS ADVISORY REVIEW BOARD
Minutes
La Quinta Inn & Suites
4600 Capitol Boulevard SE
Tumwater, Washington 98501
September 14, 2017

Members Present	Representing	Members Absent	Representing
Bill Frare (<i>Chair</i>)	State Government	Teresa Berntsen	OMWBE
Andrew Thompson (<i>V. Chair</i>)	General Contractors	Rep. Vincent Buys	House (R)
Steven Crawford	School Districts	Greg Fuller	Specialty Contractors
Neil Hartman (<i>for Lee Newgent</i>)	Construction Trades	Lee Newgent	Construction Trades
Senator Bob Hasegawa	Senate (D)	Irene Reyes	Private Industry
Ty Heim	Public Hospital Districts	Gary Rowe	Counties
Joaquin Hernandez	Private Industry	Rep. Steve Tharinger	House (D)
Charles Horn	Insurance/Surety Industry	Vacant	Senate (R)
Rebecca Keith	Cities		
Santosh Kuruvilla	Washington Ports		
Brent LeVander	General Contractors		
Robert Maruska	Washington Ports		
Alan Nygaard	Higher Education		
Mark Riker	Construction Trades Labor		
Walter Schacht	Architects		
Mike Shinn	Specialty Contractors		

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 8:37 a.m.

A meeting quorum was attained.

Everyone present provided self-introduction.

APPROVE AGENDA - Action

Andrew Thompson moved, seconded by Robert Maruska, to approve the agenda as published.

Motion carried unanimously.

APPROVE JUNE 6, 2017 SPECIAL MEETING MINUTES – Action

The following changes were requested to the minutes of June 6, 2017:

- On page 1, within “*Members Absent*” replace “*Rep. Hans Dunshee*” with “*Rep. Steve Tharinger.*”
- On page 13, within the ninth paragraph, replace “*pervasive*” with “*persuasive.*”

Brent LeVander moved, seconded by Rebecca Keith, to approve the minutes of June 6, 2017 as amended.

Motion carried unanimously.

APPROVE MAY 11, 2017 MINUTES – Action

The following changes were requested to the minutes of May 11, 2017:

- On page 1, within “*Members Absent*” replace “*Rep. Hans Dunshee*” with “*Rep. Steve Tharinger.*”
- On page 7, the replace the agenda topic of, “*High Performance on Design-Bid-Build Committee – Proposed Legislation*” with *Public-Private Partnership Committee – Proposed Legislation.*”

Andrew Thompson moved, seconded by Mike Shinn, to approve the minutes of May 11, 2017 as amended.

Motion carried unanimously.

PUBLIC COMMENT

Chair Frare encouraged public comments throughout the meeting.

DESIGN-BUILD BEST PRACTICES COMMITTEE – Information

Walter Schacht, Chair, Design-Build Best Practices Committee (DBBP), updated members on the status of the committee's work and the draft Design-Build Best Practices Guidelines document. The DBBP is scheduled to review and approve the document for the Board's consideration and action in November. Mr. Schacht introduced Preston Potratz, Integrus, who participated in the discussion by teleconference.

The DBBP is comprised of 14 appointed members. Oliva Yang, Washington State University, serves as Co-chair. DBBP's distribution list includes 95 names with many individuals participating in meetings. The DBBP established protocol for enabling the appointment of a members' delegate to attend meetings on their behalf. Linneth Riley-Hall, representing Sound Transit, has been represented by Nick Datz, Sound Transit. Mr. Datz attended meetings and contributed to the committee significantly. Mr. Schacht recommended appointment of Mr. Datz to the DBBP.

Walter Schacht moved, seconded by Andrew Thompson, to appoint Nick Datz with Sound Transit to serve on the Design-Build Best Practices Committee. Motion carried unanimously.

Mr. Schacht's presentation covered the Executive Summary and Chapters 1-4. The committee continues its work on Chapter 5 – *After Team Selection*.

The purpose of the review of Design-Build Best Practices was prompted by the increasing use of Design-Build within the industry, recent changes in its use, recently authorized methodology for Progressive Design-Build, statutes providing owners with significant latitude, and issues surrounding RCW compliance as no enforcement compliance exists in comparison to the RCW overseeing GC/CM, which is disciplined, organized, consistent, and a reliable approach.

In 2015, the CPARB received a report from the Architects Engineers Legislative Committee on alternative project delivery. The presentation covered five important points:

1. Concern about the impact Design-Build on practice.
2. Primary contractual relationship shifts from the owner to the contractor
3. Scope of Architecture/Engineering (AE) services and engagement with the end user
4. Owners not always prepared to fulfill their obligations
5. Concerns about cost and fairness of competition

Senator Hasegawa arrived at the meeting.

The 2015 state capital budget included a provision charging DES/CPARB to provide recommendations on ways to encourage competition in Design-Build. The draft guidelines serve to satisfy the request.

DBBP members focused on determining what the guidelines should or should not be. The work focused on the following:

- Focus on RCW Chapter 39.10. *DBBP did not address the RCW that addresses WA State Department of Transportation (WSDOT) procurement methods for Design-Build.*
- Fill the gap between regulations and practice.
- Create a common language to facilitate good communication.
- Assist public agencies in the effective utilization of Design-Build.
- Address owner readiness issue.
- Draft guidelines recognizing procurement varies depending upon agency and the project.
- Consider the impact of Design-Build on designers and builders.
- Create reasonable expectations about process and outcomes.
- The guidelines are recommendations and not requirements.
- No proposed modifications to the statute.

To implement the guidelines, the DBBP recommends the following:

- Refer to guidelines in PRC application materials
- Use the guidelines as a resource in preparing/reviewing PRC applications
- Use the guidelines as a syllabus for AGC Education Foundation class. *First class is scheduled on November 2.*
- Collect case studies and data to document lessons learned

Mr. Thompson asked whether the committee considered having the PRC use the guidelines as criteria when evaluating applicants for expertise or experience in Design-Build. Mr. Schacht replied that he plans to contact John Palewicz about the option of incorporating the guidelines within the PRC review process would forward a specific proposal to determine the feasibility of the suggestion.

Chair Frare asked about the comparison between the AGC Education Foundation class and the Design-Build Institute of America (DBIA) class. Mr. Schacht said the AGC Education Foundation's curriculum focuses specifically on Washington State's RCW for Design-Build. Several DBIA members are active contributors to the DBBP. Although DBIA is focused primarily on Design-Build, the DBBP's review was from top down to bottom up with different perspectives than the DBIA. The committee is interested in the application of RCW 39.10, whereas DBIA is a nationally focused organization. However, DBBP encourages the industry to engage with DBIA.

Santosh Kuruvilla advised that WSDOT is conducting training on lessons learned specific to Design-Build in Wenatchee on October 3-4. He encouraged members to attend.

Chair Frare invited public comments.

Phil Lovell remarked that it appears the committee recommends no changes to RCW 39.10 language with respect to Design-Build provisions. Quite often during GC/CM training, many questions were addressed about specific provisions in RCW 39.10. The training emphasizes flexibility inherent in the statute, which enables agencies to implement the best procurement method dependent on the type of project. It appears the guidelines speak to no other requirements other than adopting best practices.

Mr. Schacht replied that at this time, DBBP is focusing on best practices. To create an environment to attain consensus, it was more practical and easier to review and discuss best practice guidelines rather than proposing changes to RCWs. Changes to the RCWs are a separate issue. Additionally, the Board did not direct the committee to recommend legislative changes.

Mr. Lovell responded that emphasis on best practices is a good approach for the moment, but the procurement method should be monitored.

Mr. Schacht reported DBBP collected some case studies as part of the review process. Those case studies are included within the Appendix; however, inclusion in the final report might not be appropriate, as they are not equal comparisons. A separate effort might be appropriate to collect case studies and data. He encouraged members to consider a process or mechanism to collect lessons learned, such as a special meeting or an all-day meeting because real-life circumstances have driven the conversations. Until all the information, both good and bad about what has happened with Design-Build has been reviewed and discussed, it would be difficult to prove different types of situations. The lack of actual case studies is a barrier in moving forward. Design-Build is much more complicated and more variable than any other procurement method, to include many moving parts. Three types of Design-Build procurement practiced today include Progressive, Traditional (Design-Build Competition), and Bridging. The fundamental difference between the three is the point in time when agreement on scope and contract price occurs. Contract scope and price for Progressive Design-Build is established after the design-builder is selected while contract scope and price are established at time design-builder is selected for Traditional Design-Build. Contract scope and price for Bridging Design-Build are established at time of design-builder selection.

Progressive Design-Build qualifications typically play a larger role in team selection while Traditional Design-Build's design proposal is key in some selections, or cost in others. Selection is typically focused on cost for Bridging Design-Build projects.

Project criteria documents are sometimes incorrectly referred to as bridging documents because bridging documents only apply to Bridging Design-Build or they are sometimes referred to as pre-solicitation documents, which are also different for the three procurement methods. For Progressive Design-Build, project scope, budget, and schedule do not have to be aligned before the selection process commences. In Traditional Design-Build, project scope, budget, and schedule must be aligned before team selection. Project criteria are typically performance requirements. In Bridging Design-Build, project scope, budget, and schedule are aligned before team selection. Project criteria are typically prescriptive.

Opportunities for Progressive include design-builder participation in development of the project goals, program, performance criteria, project budget, and increased opportunity for partner participation. Traditional Design-Build has a significant track record of use in the state, enabling owners to choose amongst alternate proposals for design, cost, and value. Bridging Design-Build enables owner involvement and design control. Horizontal projects may use prescriptive project criteria due to the complexity of land use requirements, alignments, systems, operations, and federal requirements.

Owner risks for Progressive Design-Build include lack of competition for contract price. No cost certainty at the time design-builder is selected. Traditional Design-Build might have additional costs to prepare project criteria and honoraria, and there is limited engagement between owner and design-builder during concept development. Bridging Design-Build designates owner responsibility for content of bridging documents. Prescriptive solutions may reduce opportunity for innovation and integration.

Chapter 2, *Considering the Use of Design-Build*, speaks to the importance of aligning delivery type with owner needs and establishing goals. Agencies need to be prepared, have program and stakeholder involvement defined, and understand the significant change in contractual relationships. GC/CM and Design-Bid-Build are three-legged stools creating stability. Design-Build is a two-legged stool with implications because of one contract between the contracting entity and the owner creating a potential loss of checks and balances that are typical in tripartite relationships. Cost certainty is a benefit because Design-Build enables the establishment of the cost at any time. However, many agencies seek cost certainty early in the process. Owner involvement changes significantly when transferring risk to the design-builder who must be in a position to balance the risk with guaranteeing the cost of the budget. Changes in project scope are different in Design-Build. Modifying project scope after price is set is a construction change order and it may reduce the owner's inclination to make changes.

Design-Build subcontractor involvement & self-performance have no limitations on contractor self-performance, subcontracts do not have to be competitively bid, may involve trade partners subcontractors at any time, and flexibility in terms of meeting agency goals for business diversity

Design-Build is a performance-based contract and allows energy performance guarantees and/or operations and maintenance contracting.

Few agencies have single funding allocations for design and construction. Design-Build by its nature should be a single allocation. Owners can take advantage of potentially reducing costs and expediting the schedule. Design-Build facilitates team continuity, cost certainty, and allows the design-builder to release rewards to balance risks. The type of procurement selected should align with the project. Prices should be established after construction funds are allocated.

Chapter 3 covers Design-Build Procurement. Design-Build procurement is challenging, requires much more effort, and is more difficult than any other procurement method. The guidelines provide good information:

- Sufficient information should be available for the project relative to the procurement mechanism.
- Provide information required for RFP response, such as topography, utility surveys, geotechnical data, and/or measured drawings.
- Conduct a transparent, fair selection process.
- Consistent administration of procurements encourage firms to compete.

Scope, schedule, and budget alignment:

- Progressive: Can be generally defined.
- Traditional & Bridging: Must be clearly defined.
- Moving targets create confusion amongst the finalists.
- Budget must be realistic.

Mr. Schacht's entire presentation on draft Design-Build Best Practices Guidelines can be found on the CPARB Minutes page under [2017 Meetings\September 14, 2017](#).

At the conclusion of the presentation, Mr. Schacht invited comments.

Mike Shinn asked about the number of ongoing Design-Build projects in today's market. Mr. Schacht replied that the number is uncertain. Mr. Shinn asked about forms of dispute resolution for Design-Build that eliminates the need for filing litigation. Mr. Schacht said the statute includes no provisions; however, the topic was also not addressed as an issue by the committee. Meeting participants represented owners, contractors, and design professionals. He offered to present the question to the committee for discussion. Mr. Shinn cited some project examples to include the Washington State Convention Center and the Seattle tunnel project. The presence of a resolution for resolving disputes could have led to earlier and easier settlements.

Rebecca Keith asked whether the suggestion requires an independent board as opposed to having contract language define alternative dispute resolution. Mr. Shinn said he does not believe dispute resolution provisions are included in Design-Build contracts based on his experience.

Mr. Schacht said the question is whether it makes sense for Design-Build projects to include, as part of its protocol, an assigned dispute resolution board, which normally is required for large projects. Mr. Shinn said contract terminology typically requires the filing of a lawsuit because of the lack of dispute resolution provisions for subcontractors. It is also important to establish rules for international contractors. Many contractors in the state are not United States contractors and often do not abide by the rules.

Mr. Thompson said he has learned that each public owner, with respect to the RCW, wants to have flexibility whether the procurement method is GC/CM, Design-Build, or Job Order Contracting. Although, he understands Mr. Shinn's position as a subcontractor, it is a way of addressing what might not be considered when alternative contracts are developed. Each public owner approaches the issue differently.

Mr. Shinn conceded that projects are all different; however, the industry is experiencing more Design-Build projects as joint ventures and often with contractors from a different country, which can create issues. He advocated for including provisions for dispute resolution.

Robert Maruska asked whether similar challenges exist for large Design-Bid-Build projects whereby more foreign contractors or out-of-state contractors are involved, or whether the problem is more inherent in Design-Build/GC/CM procurement projects. Mr. Shinn said that based on his experience, in the Design-Build arena with different public entities and contractors, the guidelines might be followed by some and ignored by others.

Mr. Maruska asked whether the concern is more prevalent in a prime-sub contractual relationship or in joint ventures between the construction entity and the public owner. Mr. Shinn said the problem is more prevalent between the public owner and the general contractor because as a subcontractor on the project, general contractors often have disagreements. Resolving the concerns could be accomplished by including provisions for dispute resolution instead of delaying action for seven years. His experience surrounds the Seattle tunnel project because many minority subcontractors suffered because of project problems causing many subcontractors to lose their business. It is likely the Board could resolve many of the issues and assist in making the situation better for everyone.

Steve Crawford pointed out that as a representative of a public owner, all projects are different. Owners have different requirements, rules, and staffing. From an owner's perspective, owners want the ability to develop contract language that

is appropriate for the agency and the project while understanding the contract should be reasonable in how it addresses risks and balance to maintain interest by the contracting and subcontracting community. Including requirements perceived as too lopsided could generate less interest in projects.

Alan Nygaard added that the statute requires a dispute resolution alternative for Design-Build. However, the statute does not speak to the relationship between generals and subcontractors. As a representative of a public owner, the owner would not want the responsibility of developing contract language describing that relationship.

Mr. Shinn acknowledged the concern but wanted to ensure dispute language is included. Mr. Nygaard reported owners are required by the RCW 39.10.320 to include a dispute resolution process in a Design-Build contract. Although the process might not be similar between public owners, all owners are required to include them within the contract.

Mr. Kuruvilla commented that the genesis of the review is the belief by architects and engineers that generally, they were being marginalized in the Design-Build process. Unfortunately, that is the reality today. While understanding that is not the intent by contractors, the reality is that it happens frequently. There are examples in Florida and with Texas DOT where the Design-Build team was selected and then the contractor hired other primes because of better pricing. He suggested capturing those concerns because he is uncertain about the solution. Unfortunately, the reality of Design-Build is that engineers and architects are being marginalized.

Mr. Schacht suggested the only mechanism available would be a teaming agreement. A teaming agreement was discussed during a WSU Design-Build Forum when the issue was addressed. A teaming agreement, dependent on how it is executed and its contractual obligations, could be the best mechanism for addressing the issue. The federal government requires submission of a teaming agreement for some projects. The issue surrounds the complication of pursuing the process and the importance of advance notice because a teaming agreement can require a month to negotiate and develop because of specificity to the entities entering a partnership and the project. The odds of the two parties arriving at a teaming agreement and publicizing that information prior to the release of the RFQ is not likely. If an agency forecasts the project months in advance and has agreed to team with a design-builder, there could be an opportunity to create a memorandum of understanding creating some certainty for both the contractor and the agency. The benefit of submitting a teaming agreement helps to build the RFQ submittal by defining the roles and responsibilities of the partners. Fortunately, for many who compete for Design-Build projects for visible public projects, the agency hiring the Design-Build team values the Design-Build team and likely would not support the removal of the prime entity from the team. The change from a prime to a subcontractor relationship cannot be avoided in Design-Build; however, dependent upon what the owner is seeking from design professionals, a design professional in the project could serve a central role.

Mr. Kuruvilla responded that the point of a teaming agreement is important. However, the panacea is that a teaming agreement is not often the best solution. One example of a teaming agreement that was never achieved was the Seattle tunnel project whereby his company had a significant role with a signed teaming agreement that was not honored.

Ms. Keith thanked Mr. Schacht and the committee for its work. She acknowledged the challenges associated with the lack of data. She asked whether the appendices have been completed. Mr. Schacht said the appendix includes a list of case studies; however, resources are necessary to review the case studies and complete additional research. Ms. Keith said it appears the development of the guidelines was based on experiences and anecdotal conversations with experienced individuals because of the difficulty in comparing situations and developing data for analysis. She referred to success as being defined as fairness to the forum and production of a quality product for the public. She expressed interest in learning how further analysis could be pursued to help inform the comparison.

Mr. Schacht said the observations are correct as the draft was developed over a course of 14 four-hour meetings with committee members and other interested participants. All meetings were transcribed. The information was reorganized by like discussions and continually edited. Development of the guidelines was based on a group of people providing input on what worked and did not work and developing a set of recommendations. Case studies and data tend to be a gaping hole in CPARB's mission, which is an institutional issue the Board should resolve. He recommended pursuing Mr. Kuruvilla's previous suggestion of convening half-day or day-long sessions with industry participants sharing information on the effectiveness and ineffectiveness of GC/CM and Design-Build. He supported creating an environment for enabling

honesty by those who pursue the work. A set of projects have been identified of civic buildings that do not necessarily cover the range of different Design-Build projects but are similar and would benefit researchers when meeting agencies and design-build teams to secure data.

Mr. Crawford commented that although datasets on the projects for a like comparison are lacking, discussion by committee members was thorough on the successes and failures of those projects, which is included within the draft guidelines.

Ms. Keith said some of the information was unclear as some information spoke to some owners pursuing different types of methods, which affords flexibility but led to some confusion in the draft, as it could have achieved good results or was only information gleaned from surveying. Mr. Crawford replied that Design-Build is an evolving method with different ways of accomplishing goals. Some situations might not include only one option but speak to other acceptable ways.

Mr. Schacht said the challenge for the committee was the variety of agency goals for pursuing Design-Build. The committee considered the three forms of Design-Build, which are all different. Other important considerations were cost and design, which is why it was impossible to produce prescriptive guidelines. For example, if lowest cost is the owner's parameter or qualifications of the team and design and value are the parameter, those scenarios are the challenges with Design-Build. Design-Build speaks to a love/hate relationship within the design community because there are many positive aspects of Design-Build along with negatives, such as a lack of direct contracting with the owner and inability to provide direct strategic advice as a design professional.

Chair Frare invited Mr. Schacht to introduce a separate, but related issue.

Mr. Schacht said he addressed the issue of honorariums during the May meeting. The language in the RCW requires honorariums and that it will generate meaningful competition among potential proposers. To determine the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria. The RCW generates three questions of whether a public body may determine honorarium requirements are not required for Progressive or Bridging Design-Build projects. Many projects include honorarium payments for Progressive procurements. DES also afforded an honorarium payment for a project. However, most Progressive procurements do not include an honorarium and Bridging procurements typically do not include honorariums. As the statute does not differentiate between the three Design-Build procurements, the language should apply to all forms of Design-Build procurement. RCW language of "shall consider" allows the public body to determine "shall consider" but then decide not to compensate for the effort. Finally, as noted by architects for Progressive procurements, the issue is determining the interface of RCW 39.80 (requires qualifications-based selections for architects and engineers) with Design-Build cost proposals under RCW 39.10. Architects are mostly concerned about that issue with Progressive Design-Build procurement and not as much with Traditional or Bridging Design-Build procurements.

Mr. Schacht cited three recent State Board of Community and Technical College Design-Build projects administered by DES. One was a Design-Build project from the 2015 capital budget for a traditional procurement for renovation of main buildings on the Spokane Community College campus. The honorarium was \$20,000. Two teams submitted RFQs. A second Traditional Design-Build procurement for an advance manufacturing building at Clover Park Technical College included an honorarium of \$75,000. Both projects required schematic design as part of the design proposal. The Clover Park project attracted five proposals. Finally, a Progressive procurement for a student success center at Bellevue College did not include an honorarium but attracted 11 highly qualified firms. The limited stipend offered for the Traditional competitions likely had some impact on the number of firms competing whereas the risk reduced by the Progressive method with no honorarium was able to attract 11 firms.

Chair Frare invited public comments.

Donald Caffrey, GGLO, shared that his company competed on the Clover Park Technical College and Spokane Community College projects. For the Clover Park project, the firm expended efforts four times the amount of the honorarium for the schematic design effort. For the Spokane Community College project, the honorarium only covered 15% of the firm's efforts. On average for Design-Build projects in Washington, the company has pursued higher

education projects and the amount of effort for a Traditional Design-Build method is 15% to 25% more than the honorarium.

Chair Frare asked Mr. Caffrey about his opinion of the appropriate honorarium for a project to ensure competition.

Mr. Caffrey responded that in an ideal scenario, the company would be compensated for all efforts. However, within a competitive environment, it is typically less. Within the Progressive Design-Build environment where some of the risk is transferred, the company is able to compete on qualifications, which is helpful and reduces costs to the public sector as well.

Mr. Maruska asked whether teaming agreements were part of the procurements, and in those procurements with teaming agreements, was compensation from the contractor to the design professionals proportionate to the work expended. Mr. Caffrey confirmed teaming agreements were involved for each of the projects; however, the honorarium was through the contractor with no additional funds provided by the contractor.

Mr. Thompson said he is employed by a heavy-civil contractor. Within the Design-Build arena, stipend/honorariums from WSDOT are paid to the consultant with the companies rarely retaining any of the honorariums.

Mr. Caffrey said the amount retained by the contractor from the honorarium was minimal in most cases, as the honorarium was divided equally among the design teams. The contractor also contributes a fair amount of effort. The effort expended by the firm typically does not include marketing and business development staff. Often, contractors contribute marketing assistance.

Mr. Kuruvilla commented that within the horizontal industry, the multiplier is typically 1.5 for the design effort compared to the vertical industry, which is much less.

Mr. Thompson pointed out that the issues should be part of the initial discussions between the parties in terms of honorarium expectations.

Barney Mansavage, Principal, SRG Architects, said his company has competed in a number of Design-Build projects. The company served as the Design-Build team for the WSU project in Everett. The company competed for the state's 1063 project, Clover Park project, and the South Puget Sound Community College project in Lacey. SRG Architects was one of the finalists for the Bellevue Progressive Design-Build project. The amount of effort required by the RFP is typically high to guarantee a price. The company bids projects not because they are Design-Build but because they are large projects. The project type attracts the company to bid, not necessarily the relationship with contractors in the early stages of design. The effort to compete for those projects is substantial. In most situations, the RFP submittal is above the level of a schematic to determine a guaranteed price for the contractor partner. He cited examples of projects, project cost, schematic effort, and honorarium:

Project	MACC	Basic Schematic Design Cost	Honorarium
<i>1063 Building</i>	<i>\$60 million</i>	<i>\$600,000</i>	<i>\$200,000</i>
<i>WSU Everett</i>	<i>\$40 million</i>	<i>\$500,000</i>	<i>\$125,000</i>
<i>South Puget Sound Comm College, Lacey</i>	<i>\$7 million</i>	<i>\$100,000</i>	<i>\$25,000</i>
<i>Clover Park Technical College</i>	<i>\$30 million</i>	<i>\$350,000</i>	<i>\$75,000</i>

In most of those projects, the honorarium was approximately 20% to 30% of basic schematic design fees. Considering those figures as a starting point would be desirable. The work required to attain a guaranteed price is above the schematic design level; however, when comparing the level of effort, some of the fees would have covered the effort and some not at all. Some level of effort and risk as a design professional is fine and appropriate as long as schematic design is covered. Mr. Mansavage said he is a fan for moving toward the Progressive Design-Build model. Real design work is necessary to achieve a guaranteed price.

Dean Clark, LMN Architects, said his company has completed many higher education projects at most of the four-year college campuses, as well as a number of community colleges. The company has competed for Design-Build even since the method was first introduced. One recent competitive Traditional Design-Build project was the WSU Clean Tech Building with a \$42 million budget and a \$100,000 stipend for two losing teams. The company's design team spent approximately \$460,000 to compete and successfully win the project. The second project was WSU's Digital Classroom Building with a \$43.4 million budget and a \$125,000 stipend for two losing teams. The LMN design team spent \$540,000 on the competition. Unfortunately, the company was one of the losing teams. LMN Architects also participated in out-of-state Design-Build projects to include three Traditional Design-Build projects at the University of California (UC) in Irvine. The University's 24-year history of building projects were completed using the Design-Build procurement method. UC at Irvine developed a design build system that values fully developed documented and embedded solutions from competing teams. The system also recognizes the extensive work involved in preparing the solutions. A recent project costing \$40 million afforded a stipend of \$400,000 to the losing teams. LMN believe 1% is a good starting place for a fair stipend or honorarium. One to 1.2% is where schematic design occurs for many projects on a state fee schedule. That level of stipend, which does not fully compensate the effort, encourages participation by the best architects while still supporting a highly competitive process.

Mr. Schacht noted the number of architects attending the meeting because of the issue. He noted most firms represented in the audience are typically 16-20 person firms with some larger firms attending as well. Most of the firms are not large national firms, but are small to medium-sized businesses. Most of the design professional practices are oriented to serving the Design-Build market. The issue goes beyond best practices guidelines because it speaks to knowing what the statute means in terms of the three questions. With respect to the interface between RCW 39.10 and RCW 39.80, he suggested the Chair should consider preparation of a memo seeking an opinion from the Attorney General on the relationship between the two statutes.

Chair Frare affirmed his willingness to work with Mr. Schacht to draft a memorandum.

Mr. Schacht asked about the Board's capacity for considering whether an honorarium is required for all Design-Build project methods and what constitutes, "*shall consider.*"

Chair Frare affirmed the next steps of working with Mr. Schacht to frame the questions and seek advice and direction from the Assistant Attorney General with respect to the interface between RCW 39.10 and RCW 39.80.

Mr. Thompson complimented and thanked members and participants of the DBBP Committee for their efforts and good work.

PROJECT REVIEW COMMITTEE – Information

Enloe Dam Appeal Recap

Chair Frare provided a recap of the Enloe Dam Appeal considered by the Board in June. During the meeting, the Board considered two issues of whether the Board should stay the construction pending a larger hearing and whether the Enloe Dam project lacked the experience necessary to complete a successful Design-Build project. The Board rejected the stay and affirmed the PRC's unanimous decision to approve the project as the applicant had the necessary experience to complete the work. For both issues, the Board ruled in favor of the Okanagan Public Utility District (PUD). The appellant, Columbian, has not filed any further appeals.

Nancy Deakins said the Okanagan PUD is working with government agencies to initiate a construction contract for the project.

Mr. Shinn asked about the federal deadline to receive federal funding for the project.

Chair Frare confirmed that the deadline for securing the permit was in July.

Joaquin Hernandez arrived at the meeting.

PRC Meetings Update

Rustin Hall, CEO, ALSC Architects, reported he assumed the PRC Chair position on July 1st. The PRC has been extremely busy with 17 project reviews and other actions occurring since May. Of all the applications reviewed, one application was denied but was subsequently approved after the agency resubmitted the application.

May 25, 2017 – The PRC conducted the Vice Chair election for 2017-2018. Two nominees presented their credentials for the position. Members discussed whether the bylaws required the position to be filled by a member representing the public or private sector. Members determined there was no requirement in the bylaws and elected Jon Lebo to serve as Vice Chair. Unfortunately, Mr. Lebo recently submitted his resignation from the PRC and members plan to elect his replacement during the September 28 meeting.

- ***Edmonds School District*** submitted a GC/CM Recertification Application. The School District is exceptionally well qualified to pursue GC/CM project delivery. Edward Peters, Capital Project Director for the School District was recently appointed as a member of the PRC. Members approved the recertification unanimously.
- ***City of Spokane Public Works and Utilities*** submitted a Design-Build project application for its Post Street Pedestrian & Utility Bridge project. The project is complex and involves a bridge serving vehicles and pedestrians, as well as power and utility lines. The bridge had deteriorated significantly and the amount of coordination required to ensure non-interruption of services qualified the project for Design-Build procurement. The team presented evidence of appropriate Design-Build staff experience in addition to experience supplemented by Hill International and Robynne Parkinson. The PRC unanimously approved the application.
- ***Vancouver Public Schools*** submitted a GC/CM application for McGloughlin Middle School Replacement, Marshall Elementary School Replacement, and Lieser K-12 Modernization projects. All three schools are located on one occupied site and qualified under the criteria for GC/CM. The agency demonstrated an aggressive schedule to ensure timelines were achieved. The District also contracted with Parametrix, Perkins Coie, and LSW Architects. The PRC approved the application unanimously.
- ***Shoreline School District*** submitted a GC/CM application for their Early Learning Center project. The project is located on an occupied site with an aggressive schedule to accommodate school scheduling. Members determined the GC/CM delivery method was appropriate to ensure the work was completed safely and effectively. Required GC/CM expertise was provided by Parametrix, Perkins Coie, and Mahlum Architects. The PRC unanimously approved the application.

July 27, 2017 – Due to the number of applications, the meeting split into two groups for panel project reviews. The meeting opened with training for new members. Because of the length of the agenda, the training session was truncated with future training opportunities scheduled. Members discussed proposed changes to the Bylaws with the review extended to the next PRC meeting. Most of the changes are housekeeping to update references.

Members reviewed three GC/CM Certifications:

- ***Public Hospital District No. 1, Mason County*** has utilized GC/CM on past projects and demonstrated GC/CM experience. All personnel working on previous GC/CM projects continue to work in the same capacity. Consultants providing additional support include OAC Services and TGB Architects. Certification was approved unanimously.
- ***Clover Park School District*** submitted an application for GC/CM certification. The School District has completed several GC/CM projects at Joint Base Lewis-McChord. Personnel demonstrated the necessary experience with contracted additional support from Parametrix and Perkins Coie. Certification was approved unanimously.
- ***Spokane Public Schools*** sought certification for GC/CM. The School District has several years of GC/CM project experience and was previously certified. The agency's certification expired with the School District submitting a new certification application. Certification was approved unanimously.

Members considered and acted on the following project applications:

- **Chelan County Public Hospital District #2** applied for GC/CM for the Lake Chelan Hospital project. The applicant received prior approval in 2009 for the same project. However, the project did not receive funding. The project was resubmitted and approved unanimously as the applicant demonstrated the importance of continuum of care for patients during the sequencing of the construction project. The project team was supplanted by a team of consultants.
- **Centralia School District** submitted a GC/CM project application for Modernization of Centralia High School. The project was approved unanimously. The project site is occupied and the project includes multiple phases. The site also houses a central production kitchen serving the entire School District, which must remain operational. Consultant support included OAC Services, Perkins Coie, and BLRB Architects.
- **Tacoma Public Schools** submitted a Design-Build application for replacement of Boze Elementary School. The School District intends to use an existing set of construction documents from the Arlington Elementary School Project (*currently under construction and nearing completion*) as a bridging document during the Design-Build selection process together with a site adaptation approach. The approach assisted in reducing costs and expediting the schedule. Additional Design-Build expertise would be provided by Parametrix, Perkins Coie, and John Palewicz from the University of Washington. The PRC unanimously approved this project application.
- **Auburn School District** submitted a GC/CM application for replacement of four elementary schools. The application was approved unanimously. All four occupied sites are to be replaced with new schools requiring extensive sequencing and scheduling. Additional team expertise would be provided by Parametrix, Perkins Coie, and NAC Architecture.
- **Cheney Public Schools** submitted a GC/CM application for the expansion and modernization of Cheney High School. The school will be occupied during construction. The applicant demonstrated responsible budgets and timelines for the project. Additional expertise supporting the project includes OAC Services, Perkins Coie, and ALSC Architects. Members approved this project.
- **City of Tukwila** applied for a GC/CM project to replace 3 fire stations. The PRC panel denied the application because of the lack of demonstrated experience. The presentation did not reflect information contained in the application. Lacking answers to questions, the panel denied the application and suggested the agency should resubmit the application. The panel vote of 4/4 required six votes to approve the application.
- **Centralia School District** submitted a GC/CM application for replacement of Ford Prairie & Jefferson Lincoln Elementary Schools. The site will remain occupied during construction. The applicant demonstrated GC/CM experience with supplemented additional support from OAC Services, Perkins Coie, and BCRA Architects. The panel approved the application unanimously.

August 23, 2017 - Special Meeting

Panel members reviewed the following project applications:

- **Spokane Public Facilities District** submitted a Design-Build application for the INB Performing Arts Center, a facility that was designed and built for Expo '74. Since then, improvements to the building have been minimal. The project is complex with a lack of contractors fully capable of completing some of the work. The applicant presented compelling arguments for satisfying RCW 39.10 criteria and presented extensive Design-Build experience supplemented by consultants Hill International and Stan Schwartz/Witherspoon Kelly. The panel unanimously approved the project.

- **City of Tukwila** resubmitted the 3 Fire Station Replacement GC/CM Project application. The revised application and subsequent presentation during the session provide a much clearer package. The applicant was able to demonstrate how the project meets criteria in RCW 39.10. The panel approved the project unanimously.
- **King County Department of Transportation** submitted an application for their Design-Build Pier 50 Float Replacement project. The applicant had little Design-Build experience for vertical construction but had experience in Design-Build for two pedestrian-oriented vessels delivered to the project site. Members extensively discussed the project and agreed a float is considered a vessel. Additionally, few companies are qualified to compete for the project. Project team experience would be supplemented by Ed Debroeck of KPFF, a consulting engineering firm. The panel unanimously approved the application.

Mr. Hall reported on the receipt of a letter from Jon Lebo notifying him of his resignation from the PRC because of a change in employment status with the University of Washington effective September 15, 2017. The PRC has received two nominee applications for the Vice Chair position.

Mr. Shinn spoke to the importance of filling the vacancy created by Mr. Lebo's resignation to maintain continuity on the PRC.

Mike Shinn moved, seconded by Andrew Thompson, to nominate and elect Amy Engel from the University of Washington to fill Mr. Lebo's position on the PRC for the remaining term.

Ms. Engel affirmed her interest to serve on the PRC.

Motion carried unanimously.

Mr. Hall reported on one other vacant owner position on the PRC representing Public Hospitals.

Mr. Maruska commented on the replication of consultant firms listed within the project applications. There have been some concerns surrounding commitments by consultant firms supporting numerous projects concurrently. He asked whether PRC members consider time commitments of consultants when considering project applications. Mr. Hall replied it is an issue and question regularly addressed by members. Members have requested specific percentages of time commitments per phase and by individual. Quite often, after reviewing the application prior to the meeting, members submit questions to the applicant. The applicant either provides a written response or addresses the questions during the presentation. In those circumstances where project percentages appear to be insufficient, the applicant has an opportunity to address the concerns.

Mr. Thompson asked whether the proposed changes to the bylaws represent clarifications for the Chair and Vice Chair positions. Mr. Hall said members discussed the option of balancing the officer positions between public and private sector representation and elected not to codify any policy to ensure flexibility.

Mr. Thompson noted the number of school projects and asked whether any of the projects would be affected by the lack of a state capital budget. Senator Hasegawa noted that most of the school projects are funded through local levies.

Mr. Crawford commented that some school districts would be affected, as their projects are contingent on state funding, which likely will result in a delay of the projects. Other school district projects were locally funded and could move forward.

Mr. Thompson commented on the importance of avoiding any project delays because of the potential of costs escalating.

Mr. Hall acknowledged the support to the PRC by Ms. Baker and Ms. Deakins.

HIGH PERFORMANCE ON DESIGN-BID-BUILD COMMITTEE – Information

Nancy Deakins reported the committee was established at the direction of a budget proviso in the DES 2016 budget to develop recommendations to improve the Design-Bid-Build project delivery method to include higher performance criteria with incentives for the designers and contractors meeting the performance measures. The committee has met several times. No meeting was held in May because of uncertainties surrounding the lack of a capital budget. DES elected not to reconvene the committee until a capital budget is approved because of funding constraints.

Some ideas for best practices discussed by members included establishing a post award pre-construction meeting to review performance with contracting and design teams. Another idea is instituting a post-construction period for performance verification through an option of a separate contract similar to the energy performance contracts for monitoring and verification periods. The intent is to include measurements for performance over and above code requirements. Issues surrounding incentives were briefly discussed with members preferring to consider where incentives may have been used prior to developing a recommendation.

Chair Frare recessed the meeting from 10:35 a.m. to 10:50 a.m. for a break.

JOC EVALUATION COMMITTEE – Information

Amy Engle, Chair, updated members on the status of efforts by the JOC Evaluation Committee.

In February 2017, the Board created a committee to review Job Order Contracting (JOC). JOC has been in existence for 12 years with the University of Washington actively participating in the program over the last 12 years. As an owner, UW believed it was time to evaluate the program because of stringent provisions in the original RCW. With passage of time, it is appropriate to review current practices and determine whether improvement suggestions might be warranted.

The committee was tasked with examining successes and challenges, review data collection, research other data that might be available, develop best practices, and submit recommendations. Eight committee members were appointed initially with three additional individuals participating. The committee convened monthly meetings generating good attendance and much discussion.

Ms. Engle recapped the results of each of the tasks:

- **Review successes and challenges** – In 2008, only four owners utilized JOC. Today, 13 owners utilize JOC. As required by law, 90% of the work must be subcontracted. Through data collection, that requirement has been achieved with subcontractors participating in 90% of the work. JOC is an expedited delivery method and affords flexibility to owners by minimizing schedule impacts on projects. Other projects experiencing success using JOC are those repeatable projects or projects with very limited design. Other successes include team collaboration by having the contractor onboard earlier to review constructability, budget, risk, schedule, and determine appropriate contingencies. UW has implemented a portfolio approach of JOC projects to ensure volume economies and minimizing schedules.

Challenges across the state include the lack of qualified prime contractors. Bidding results produce a limited pool of responses. Subcontractor availability in today's market is also a challenge, which affects all delivery methods. Other challenges are inconsistent application of WMBE measurement requirements, state funding consistent with JOC limits, and the use of a unit price book, which inhibits some general contractors unfamiliar with RSMMeans thereby limiting the contractor pool.

- **Review of Data Collection** – The committee assisted with the completion of the 2015 and 2016 collection process and analyzed data from the last eight years, as the full 12 years of data were not available. The usage of JOC has increased 182% from 2008 to 2016 and the number of projects completed has increased 100% with work orders doubling from 285 in 2008 to 470 today. WMBE subcontracting has increased 187% to \$5.7 million in 2016. WMBE usage has increased to 12.8% of award amount and 18.2% of subcontracted amount. The average project size since 2008 has increased 41% because of the direct correlation between the market and the success of the delivery method. The committee discovered owner inconsistency in Washington State Sales Tax and whether sales tax was

included in the limit amounts. Some owners believe sales tax is included in the \$350,000 limit, which speaks to a need to clarify the information. The reporting period was also discussed, as different reporting benchmarks exist.

- **Best Practices** – Some of the best practices and procedures reviewed included utilizing a collection process maintained by Job Order Contractors versus the owner to improve accuracy and timelines, report state certified participation, as well as small business enterprise participation separately, conduct an outreach event for new or interested owners, utilize the PRC for other public owners to request JOC use, and continue to mentor WMBE firms. Subcontractor bonding is not required using JOC as the delivery method.
- **Recommendations to CPARB** – Task the JOC Committee with the data collection process rather than DES and allow the owner to utilize unused contract capacity during later periods. At times, an owner will only use \$2 million of their allowed \$4 million annual capacity. Lacking a capital budget this year, capacity is compromised in terms of when the contract is issued and when the funds are expended. The proposal would retain the capacity rather than losing the unused capacity. Additionally, because of the 41% increase in average project size, the committee recommends an increase in the work order limit from \$350,000 to \$500,000.

Ms. Engle asked for the Board's support for the committee to draft some changes to the legislation. The committee is scheduled to meet at the end of September and could present draft language to the Board at its next meeting.

Chair Frare expressed support for the recommendation of utilizing the PRC for reviews of JOC project proposals, as well as the committee overseeing JOC data collection efforts. However, he was not as supportive for transferring unused capacity to the next year while supportive of increasing the limit from \$350,000 to \$500,000.

Joaquin Hernandez inquired as to whether the \$4 million capacity constitutes a budget each year for owners. Ms. Engel replied that work orders cannot exceed \$4 million per year. Today, because of the lack of a capital budget, many owners are unable to use any capacity creating a reduction in capacity when the state budget is finally passed.

Mr. Maruska commented on the Board's practice of focusing committees for a specific task for a short-term duration rather than as a perpetual committee. His concern is assigning data collection to a committee even though there is some validity in retaining data collection under a jurisdiction, such as a public owner. However, he has concerns with delegating that responsibility to a committee for the reason as stated. Regarding the PRC, once a group of public entities is authorized by statute to use JOC, the entity has the authority until the Legislature changes requirements. Typically, there is a defined period for authorization and he would prefer not requiring owners to apply to the PRC every three years to receive authorization to use JOC. He prefers including some flexibility within the PRC review process. In terms of the size of work authorizations, the Board has debated the issue and tried to align Small Works in conjunction with JOC. He supported increasing JOC to \$500,000 but would also prefer considering the Small Works Roster to maintain an equal parallel.

Mr. Thompson asked about the impact to the PRC if JOC project proposals were submitted in terms of workload increase. Brent LeVander replied that as a member of the committee, the recommendation is a future consideration, as PRC membership currently does not include JOC professionals. The committee is not recommending immediate implementation but rather acknowledges best practices should be considered in the future. An adjustment in the membership of the PRC would be necessary for reviews of JOC project proposals.

Ms. Keith questioned the intent of the recommendation because it was unclear whether the proposal is to add different public bodies to PRC membership. She agreed with Mr. Maruska's concern because the statute currently authorizes some public bodies to use the JOC delivery method. She questioned the reasons leading to the recommendation. Ms. Engle said there were a number of issues. The first is how the RCW addressed issues at the time legislation was adopted because the method was new to the state. The legislation is stringent compared to other forms of alternative public works especially compared to Design-Build and GC/CM. As the delivery method has been used for the last 12 years with most users well versed in the application, the committee believed some of the limitations could be assigned to the PRC to oversee rather than submitting changes to existing legislation. JOC is an alternative procurement and risk is somewhat limited because of work order limitations. Ms. Engle added that from the University's perspective, she could review

pending projects for the biennium and determine whether the projects could be completed by the JOC procurement method especially if the limit was increased to \$6 million affording the University with some efficiencies and economies for both staff time and contractor time. Increasing the limit affords some flexibility to public owners. The committee invited Ed Simpson to provide an owner's perspective of an agency that does not use JOC. Mr. Simpson was an advocate for increasing the limit as he could review his agency's budget and consider whether it was possible to utilize JOC. Having a PRC review process rather than changing the RCW made more sense to the committee.

Chair Frare shared that several years ago, Hospital District representatives asked PRC for authorization for Job Order Contracting. A change in legislation was necessary. The proposal would enable an administrative action based on ability rather than pursuing a legislative change.

Mr. Crawford asked whether there have been many agencies expressing interest not currently qualified to pursue JOC. Ms. Engle replied that the committee did not reach out to the community other than to Mr. Simpson because he uses the University of Washington's JOC program. She is unsure whether other public agencies that do not have the authority would be interested. Another suggestion was to provide some mentoring or share best practices or lessons learned with other public owners to help them with the process.

Mr. Maruska shared some history surrounding Job Order Contracting. The Board heard from the contracting community that typically would compete for projects within the JOC range. They shared how they would be affected because the pool of work would be reduced because JOC enables selection of subs without competition leading to the loss of work or the ability to gain work. There were some concerns surrounding that issue particularly if the skill set of public owners to negotiate prices was a concern, as none of the work is bid. Those concerns were primarily the reason why legislators limited JOC. Interested public owners not authorized under the RCW are required to justify the benefits of using JOC to the Legislature.

Alan Nygaard moved, seconded by Mike Shinn, to direct the JOC Evaluation Committee to present recommendations related to RCW 39.10 for JOC contracting.

Senator Hasegawa said one of the arguments for JOC was that it would allow those public entities experiencing deficiencies in MBE outreach more opportunities for MBE's that otherwise might be excluded from the process. He recommended the proposal should include some language embedding MBE outreach.

Chair Frare acknowledged the request.

Motion carried unanimously.

DATA COLLECTION SYSTEM – DEMO – Information

Mr. Nygaard reported that after the Board was formed, members established a system of data collection and tasked public owners to collect project information. The result was a substantial amount of data involving a tremendous amount of work. However, resources were not available to analyze the data. Seventeen alternative delivery projects were initially approved under RCW 39.10. A substantial amount of data volume exists for those 17 projects. However, the lack of a budget and resources for completing the analysis render the data essentially useless. More data requires budget and staff resources to complete the analysis.

Mr. Nygaard demonstrated an internet-based system enabling public owners to input information by answering a series of questions the Board previously approved. The system is not a public website.

Mr. Thompson noted that the parameters for the type of data to collect were identified by the Board approximately two years ago as part of a committee effort. Senator Hasegawa was a member of the committee.

Mr. Nygaard reviewed the questions. The level of effort is minimal for public owners. Previously entered data can be changed later. The program includes a drop-down list of existing contractors previously entered to ensure contractor name uniformity.

Mr. Hernandez asked whether the system could be used by public owners to measure contractor performance on projects. Mr. Nygaard said the information does not include performance data other than providing information on what could be improved. Analysis of data could identify several projects experiencing similar problems for the Board to follow-up on ways to improve or identify inefficiencies or processes.

Ms. Deakins referred to the questions and the discussion on how to derive information on lessons learned or problems encountered during projects. The questions are framed positively, such as, “*What were the best practices on the project?*” Another question asks for suggestions for modifications to public works legislation, which would help the Board. The system is designed for only Design-Build and GC/CM projects at this time.

Mr. Hernandez said his concern is with a public owner identifying a construction company that might have delayed a project. Ms. Deakins said the questions are framed to avoid that type of a situation, as the focus is not about a company or an evaluation of a company. The questionnaire would be completed by the project team. Mr. Nygaard added that access is also restricted. Owners can only access their respective projects.

Senator Hasegawa asked whether the system includes some questions surrounding the collection of data on MBE status, such as whether the company is certified. Mr. Nygaard said the inclusion of the business identifier enables comparison with other databases to determine if the company is certified or non-certified.

Mr. Thompson said it also might be possible to extract a list of certified WMBE contractors who participated and who were selected.

Mr. Maruska asked whether the system is intended to enable the owner to input initial data as the project progresses versus entering all data after project completion. Mr. Nygaard said the intent is to input data during phases of a project.

Mr. Kuruvilla asked whether the system enables the ability to cut, paste, and copy from other databases, such as the WSDOT database, which is collecting data on Design-Build projects. Mr. Nygaard said the purpose of the system is for collection of data. More efforts would be required to marry data with other databases.

Ms. Keith noted that the emphasis has been on the system not being a public site, although the data is public. She asked about the development of the questions. Mr. Nygaard reported the Board approved the questions based on the committee’s recommendation. The Board obtained some pricing for data collection, which exceeded the Board’s entire budget. Subsequently, the University of Washington volunteered to develop a system.

Mr. Lovell asked whether owners are expected to input data. Mr. Nygaard affirmed owners are expected to collect the data with the project team answering the questions. Mr. Lovell asked whether the system prevents an owner from creating a blank document for the GC/CM to complete. Mr. Nygaard said the owner could provide access to the contractor. Completion of a form by the GC/CM could be one alternative for completion of the data; however, the owner is responsible to ensure data are entered.

Mr. Nygaard added that projects underway would be entered rather than entering projects previously completed. The next step is distributing the information to public owners with active projects for data entry. Existing projects will begin to populate the database.

Mr. Thompson asked whether there has been any effort to reach out to an owner to work through the data entry process prior to distributing the information to public owners. Mr. Nygaard replied said many public owners have successfully entered data. DES is the administrator of the data collection process. The system is hosted at the University of Washington but accessible through CPARB’s webpage.

Ms. Deakins reported pending actions include development of the instructions, data collection webpage on the CPARB site, and contacting public owners who have submitted PRC applications or for public body certification.

CPARB BUDGET REPORT – Information

Chair Frare reported the Legislature did not pass a capital budget. His department is funded through an appropriation in the capital budget. The department has been working since the beginning of the year on a residual amount in the operating fund, which has been expended creating the need to lay-off up to half of the department staff in the next several weeks. DES has traditionally supplemented the CPARB budget of \$100,000. Expenditures exceeding the budget have been paid by DES. That process has not been problematic up to now because of the lack of a capital budget.

Ms. Deakins added that the general fund only funds approximately one-third of the CPARB budget. Special PRC meetings would not be scheduled except for a special meeting in October to accommodate public noticing requirements. The department is cutting expenses.

Senator Hasegawa asked about the potential impact to the Board with a reduction in Attorney General services. Ms. Deakins said the expenditures for services were previously higher because of the Enloe Dam appeal.

Mr. Maruska asked whether pending meetings for the year would be impacted by the lack of a capital budget. Chair Frare advised that Board meetings would not be impacted.

Ms. Deakins commented on the difficulty of having November/December Board meetings because of the holidays and public noticing requirements. Meetings require a 20-day notice. CPARB meeting notices are published in the *Daily Journal Commerce* and *The Olympian*. She asked for feedback on the option of cancelling the December meeting because of limited staff time.

RESPONSIBLE BIDDER GUIDELINES – Deferred to November

PROPOSED LEGISLATION – Information/Action

University of Washington - Mr. Nygaard reported RCW 39.10 for Design-Build restricts the number of projects certified public bodies can complete between \$2 million and \$10 million to five projects. The University of Washington is moving more to utilize Design-Build for small projects for a number of reasons. One reason is to increase MBE participation. The University completes hundreds of small projects during the biennium. Limiting the number of Design-Build projects to five represents a small amount of the University's project portfolio. The University is seeking to increase the cap. At the next meeting, the UW would like to present some proposed legislation to eliminate the cap in terms of the number of projects or increase the number of Design-Build projects between \$2 million and \$10 million.

Ms. Deakins cited RCW 39.10.270 as the authorizing legislation for public bodies certified to use Design-Build. Legislation limits the number of projects to no more than five projects with a total project cost between \$2 and \$10 million during the three-year certification period.

Mr. Nygaard said other provisions in the statute limiting Design-Build for other entities could also be addressed during the November discussion.

Other – Chair Frare briefed members on the receipt of a letter from the National Minority Business Advisory Council requesting the inclusion of language in the public body certification and re-certification application to ensure the PRC considers an agency's past performance on inclusion and participation. He plans to invite Frank Lemos, President, National Minority Business Advisory Council, to the November meeting to discuss the proposal.

Mr. Maruska requested additional clarification of the request. Chair Frare said he would contact Mr. Lemos to discuss the intent of the request. The letter was received recently and lacking an opportunity to review the proposal, he plans to contact Mr. Lemos.

Chair Frare asked for any additional information on proposed legislation under consideration.

Senator Hasegawa reported on his legislative efforts related to public banking, which would substantially increase the state's capacity to build and fund fiscal projects. He was able to secure a budget proviso to create a task force to conduct a feasibility study. The study is scheduled for presentation during the 2018 legislative session with a set of recommendations in bill form. He offered to provide a presentation on the bill to garner the Board's support for the legislation.

Mr. Maruska asked about the status of efforts surrounding proposed Public-Private Partnership legislation. Mr. Thompson advised that Representative Buys met with the Code Reviser and staff to format the draft language to create a bill. James Lynch has been working with the Code Reviser's Office to ensure compatibility with existing legislation. Steve Masse is working with Representative Buys. He suggested scheduling an update at the November meeting by Mr. Lynch on the status of efforts.

Mr. Hernandez said he understands that project financing is one of the major issues with the legislation because of the inherent difficulty in financing public-private partnership projects. Mr. Thompson said Representative Buys plans to meet with the Treasurer's Office to discuss those issues.

Governor's Diversity Subcabinet Report – Information

Rex Brown, Administrative Director, Diversity Subcabinet, DES, distributed information on the work of the Governor's Business Diversity Subcabinet to increase access to contracting opportunities for small, minority-, women- and veteran-owned business with Washington State government. He encouraged members to contact him with any additional questions.

Mr. Brown reviewed the study's current roadmap from January 2017 through September 2017, with a new roadmap currently under development. The roadmap highlights progress to date on benchmarks. The effort involves three different phases of Building (18 months), Velocity (11 months), and Implementation (12 to 24 months).

The first phase of the Disparity Study has been completed. The second phase of data collection has begun. One phase remains for the Disparity Study for data collection on subcontracting. Public meetings have been held and stakeholders continue to be engaged by invitation only during October and November. In spring 2018, business owner meetings will be convened.

The Attorney General was asked to provide legal clarification on I-200 and its limits. The Attorney General provided legal advice as to the appropriate way to craft a program.

The Disparity Study serves as the scientific evidence to identify whether disparity exists in the state. Currently, several disparity studies are in progress. The State of Washington's Disparity Study involves 33 agencies and the University of Washington and Central Washington University. DES is overseeing the study on behalf of the State. The WSDOT Disparity Study scope includes transportation related construction and consulting contracts awarded by WSDOT. A third disparity study is underway by the Federal Aviation Authority through WSDOT. Both WSDOT studies are required by federal law. The Governor's Disparity Study is not required by law but is at the request by communities in the state that believe the state can do better than achieving 2.8% of the Governor's 16% goal for equity, diversity, and inclusion in state procurement.

Mr. Hernandez asked about the timeline for completing the Washington State Disparity Study. Mr. Brown replied that the study is scheduled for completion by January 31, 2019.

Senator Hasegawa asked whether the Federal Aviation Authority Disparity Study also covered concessionaries at Sea-Tac. Mr. Brown advised that he is unsure whether concessionaires are included. The comparison between the WSDOT studies is scheduled for posting on the WSDOT site at <http://wsdot.disparity-study.com/> within the next several days.

Senator Hasegawa asked about the role of the Attorney General in reviewing the study. Mr. Brown replied that the Office of the Attorney General completed its review and provided legal advice on the appropriate way to craft programming.

Some of the case law is not precedential, but rather, it is an opinion as it serves as the best legal advice on how to contour programming.

Mr. Thompson said he is familiar with the WSDOT study and the Washington Disparity Study but is not familiar with the Federal Aviation Disparity Study. He asked whether that study would be incorporated within the WSDOT Study. Mr. Brown said the Federal Aviation study is a separate effort. The first disparity study from WSDOT has been completed and was publicly disseminated several days ago. The Federal Aviation Authority Disparity Study is currently in process.

Discussion ensued on the various studies underway in the state both at the local and state level. Disparity studies cover the affected population, which is why the state's study could not use data from local disparity studies.

Mr. Thompson commented on the amount of funds and time expended on various disparity studies by local agencies and public owners and the potential benefits an omnibus effort could provide through a combined data collection effort. Although such an effort would be a costly venture, the outcome could reveal the status of participation and utilization of minority, women, and veteran-owned business enterprises.

Mr. Brown remarked that although he agrees, the Subcabinet serves as a central hub for much of the data. The work has assisted other efforts. Another important factor is budget. Under-budgeted efforts do not create consistent data. It is possible to leverage the effort by utilizing different data systems. The effort is advancing to an area where the nature of combining and collaborating efforts increases the overall benefit to the public.

OTHER BUSINESS

Chair Frare recognized Mr. Nygaard for his service to the Board. Mr. Nygaard has been a member for many years and plans to retire. He thanked him for his participation on committees and for his leadership.

ADJOURNMENT

Mike Shinn moved, seconded by Robert Maruska, to adjourn the meeting at 12:18 p.m. Motion carried unanimously.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services
Kelsey Beck, City of Seattle
Rex Brown, Department of Enterprise Services
Donald Caffrey, GGLO
Janet Cherry, Department of Health
Dean Clark, LMN Architects
Mike Copeland, Department of Health
Amy Engel, University of Washington
Valerie Gow, Puget Sound Meeting Services
Rustin Hall, ALSC Architects/PRC
Jeffrey Hamlett, AIA Washington Council

Matt Lane, McGranahan Architects
Phil Lovell, Citizen
Barney Mansavage, SRG Architects
Chad Merrill, King County
Scott Middleton, MCAWW
Linda Newcomb, AIA Washington Council
Jimmy Osborne, PNWRCC
Curtis Pate, DES
Preston Potratz, Integrus Architecture (via telecon)
Mike Slater, McGranahan Architects
Ross Whitehead, Schreiber Starling Whitehead Architects