

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Morning Session Minutes
1500 Jefferson – Presentation Room
Olympia, Washington
May 11, 2017

MEMBERS PRESENT

Bill Frare (*Chair*)
Andrew Thompson (*V. Chair*)
Teresa Berntsen
Steven Crawford
Neil Hartman (*for Lee Newgent*)
Ty Heim
Joaquin Hernandez
Charles Horn
Rebecca Keith
Santosh Kuruvilla
Brent LeVander
Robert Maruska
Scott Middleton (*for Mike Shinn*)
Alan Nygaard
Irene Reyes
Gary Rowe (*via telecon*)
Walter Schacht

REPRESENTING

State Government
General Contractors
OMWBE
School Districts
Const. Trades Industry
Public Hospital Districts
Private Industry
Insurance/Surety Industry
Cities
Engineers
General Contractors
Washington Ports
Specialty Contractors
Higher Education
Private Industry
Counties
Architects

MEMBERS ABSENT

Rep. Steve Tharinger
Senator Bob Hasegawa
Greg Fuller
Mark Riker
Vacant

REPRESENTING

House (D)
Senate (D)
Specialty Contractors
Construction Trades Labor
Senate (R)

STAFF & GUESTS ARE LISTED ON THE LAST PAGE

WELCOME & INTRODUCTIONS

Chair Bill Frare called the Capital Projects Advisory Review Board (CPARB) morning session to order at 8:32 a.m.

A meeting quorum was attained.

Everyone present provided self-introduction.

APPROVE AGENDA - Action

Andrew Thompson moved, seconded by Walter Schacht, to approve the agenda as published.

Motion carried unanimously.

APPROVE FEBRUARY 9, 2017 MEETING MINUTES – Action

The following changes were requested to the minutes of February 9, 2017:

- On page 6, within the third paragraph from the bottom of the page, revise the paragraph to reflect, “*Ms. Keith acknowledged the need for the City to reapply to the PRC or appeal.*”
- On page 11, correct the spelling of Ms. Reyes name in the seventh paragraph.
- On page 5, revise the third sentence in the eighth paragraph to reflect, “*His agency’s second application took much more effort.*”
- On page 14, revise the fourteenth paragraph to state, “*Mr. Nygaard advised that Garrett Buckingham representing higher education would not be participating.*”

Walter Schacht moved, seconded by Steve Crawford, to approve the minutes of February 9, 2017 as amended.

Motion carried unanimously.

EXECUTIVE SESSION

Chair Frare recessed the meeting at 8:39 a.m. for approximately 30 minutes to receive advice from the Board’s attorney, Mark Lyon, on a pending appeal pursuant to RCW 39.10.290.

At 9:08 a.m., the executive session was extended for another 15 minutes.

RECONVENE FROM EXECUTIVE SESSION

Chair Frare reconvened the meeting at 9:32 a.m.

PUBLIC COMMENT

Chair Frare encouraged public comments throughout the meeting.

ADOPTION OF POLICY – Action

Chair Frare requested the Board's consideration to adopt interim policies for appeals under RCW 39.10.290. The Board received an appeal of a Project Review Committee (PRC) ruling. To effectively act on the appeal, the Board requires some written policies. The proposal is to adopt an official policy. Chair Frare referred to the draft policy and invited questions.

Andrew Thompson moved, seconded by Alan Nygaard, to adopt Interim Policy on Appeals under RCW 39.10.290 as presented.

Andrew Thompson requested clarification as to whether the criteria for a super majority vote also applies for decision-making. The PRC requires a two-thirds majority vote when rendering a decision on a public agency application. Chair Frare advised that when the Board renders decisions, it requires a majority of 10 members regardless of the number of members present. The Board has 19 voting members.

Chair Frare invited public comments on the proposed policy.

Alyssa Englebrecht, Smith & Lowney, PLLC, representing the appellant, Columbia River Bioregional Education Project (Columbiana), said she was advised by Assistant Attorney General Mark Lyon that the Board would be discussing policy. In terms of the interim policies, there are several issues. The first speaks to item 6 in which the Board would limit its review to facts and arguments presented to the PRC. That policy speaks to why Columbiana filed a motion to convert those proceedings because there was no ability for the applicant to present facts to the PRC. The rule should track with the land use petition act rule stating that if the lower determination was made by a quasi-judicial body as an adjudicative hearing, then the Board could be limited to the facts on the record. However, if it was not an adjudicative process and all parties were not given the opportunity to present facts and receive due process, the record could be supplemented with events on appeal. Should the Board not adopt a rule, Ms. Englebrecht suggested the Board should convert the PRC proceeding, remand it to the PRC, and re-conduct the hearing as an adjudicative hearing to afford an opportunity for Columbiana to present information.

Item 3 stipulates that the Board may afford each party an opportunity to present oral argument. RCW 34.050.449 states, *"To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence..."* Both in the notice of appeal and the motion to convert, those procedures are necessary for full disclosure.

Item 4 pertains to scheduling and only provides a 10 day notice to the parties. In another rule, the Board allows a written brief. Ms. Englebrecht suggested 10 days is not adequate for the parties to submit the briefing and for the Board to consider the brief before the hearing. She suggested the provision should be longer than 10 days. The provision in item 5 for prehearing orders could help the Board. By using a prehearing order, the Board could establish a briefing schedule. It would be beneficial to have a status conference within a certain number of days of receiving the appeal followed by the hearing on the appeal five days before the deadline, which is 45 days. That would allow 35 days to establish a briefing schedule for each party to submit briefings to the Board. The rules are procedural due process rights that her client is entitled to and the denial of those procedural due process rights is an appealable issue. She also believes that because the Board has not previously handled an appeal, the status conference would be helpful because none of the parties (PUD, Columbiana, CPARB, and PRC) would know what might happen. It would be helpful to hold a status conference. To conduct a status conference, the Board would need to appoint a presiding officer. RCW 34.05.425 outlines that process. Finally, given the fast-approaching deadline of May 15 for the Okanogan Public Utility District (PUD) to select its contractor, it would be appropriate for the Board to issue a stay. The Board has the authority to stay that decision

pursuant to RCW 34.05.467. By not issuing a stay of the PRC decision, the PUD could select the contractor and that could convey that the appeal by Columbiana is moot. As a general rule, it should be adopted when a decision of the PRC is appealed. That decision should be automatically stayed until the appeal is resolved; otherwise, the Board is incentivizing applicants to select contractors quickly so that they can subvert appeals. Obviously, rushing to select a contractor is never good for the public.

Colm Nelson, Foster Pepper PLLC, representing Okanogan Public Utility District's appeal, said he has no objection to the proposed rules. The rules provide for an expeditious appeal process, which is important particularly with capital projects where permits are pending and the process needs to be streamlined. The process proposed by the previous speaker is unnecessarily long and burdensome. The statute anticipates a streamlined approach as created by the Legislature and while there are no appeal rules, the entire spirit of the statute is for a streamlined approach. That is very important for most capital projects, particularly because the PUD received a permit that requires proceeding with construction in July. Dragging out an appeal of the PRC's decision for approval is unnecessary. The project was previously approved by the PRC. The first approval was challenged based on procedural irregularities. In an abundance of caution, the PRC reviewed the prior approval and granted approval for the project a second time. The need for further cross-examination and turning the process into a judicial matter is unnecessary as it would create a dangerous precedent for this type of project and this type of proceeding. It has never been done before and the idea that the process would allow cross examining project personnel and consultants should be carefully considered because of the ramifications of that type of approach. The issue before the CPARB and the PRC is simply whether the project is a good candidate for an alternative public works process. This particular project is Design-Build (DB). There are various motions pending on the matter and the PUD has submitted a briefing as to why a motion to turn this into some other administrative process should be denied. Additionally, Columbiana also filed an appeal and while the PUD welcomes establishing an appeal hearing date, the PUD would like to move the process forward and is hoping to select a proposer. It is very important to do so soon because of the federal permit to construct the project. There is no need for a stay. The various issues have already been determined by the PRC. There is a complete record and there is no reason to create or allow for additional evidence. He strongly urged the Board to adopt the rule, which keeps the review to just a matter before the PRC. Otherwise, this will extend the process unnecessarily. Mr. Nelson offered to address any questions. He urged adoption of the appeal process procedures. He asked the Board to deny the pending motion.

Chair Frare inquired about the importance of the July deadline for the permit. Mr. Nelson replied that the federal permit is for a dam project. The Federal Energy Regulation Commission (FERC) has conditioned the permit based on initiating construction by a specific date. The permit specifies "commencing construction." The PUD had previously received an extension of the permit.

DESIGN-BUILD BEST PRACTICES COMMITTEE - Information

Walter Schacht, Chair, Design-Build Best Practices Committee (DBBP), presented the draft of the DB Best Practices Guidelines and updated members on the status of the committee's work. Many CPARB members are also members of the committee. The committee commenced work in April 2015 and convened 13 meetings with the last major meeting held in July 2016. At that time, the draft was comprised of documentation from the meetings, organized by topic, and presented to the committee as an overall outline to be edited from 117 pages to a streamlined document. He began editing the document last fall producing a document of 65 pages. The committee attained consensus on most of the issues. The next meeting is scheduled on May 25 followed by several more meetings to review the draft to ensure all areas attain a consensus by the committee. The intent is to post the draft on CPARB's website. He also plans to provide the document during Washington State University's annual DB Forum at the end of July to receive industry input. The intent is to present the draft to the Board in September for review and input with a goal to seek action on the document at the Board's November meeting.

The draft includes seven chapters. The guidelines are intended as a handbook for agencies when considering whether to utilize the DB delivery method, when determining the selection of the form of DB, and the application of the DB method for the project. The guidelines would also benefit the industry of design professionals and contractors to help them understand how agencies apply DB. The guidelines are not intended to compare DB with other project delivery methods. The guidelines include reference to established tools owners can use to evaluate whether DB, Design-Bid-Build (DBB), or GC/CM is the best method for the project. The guidelines provide public owners with information on whether to pursue

DB, and if so, whether to use Progressive, Traditional, or Bridging, as well as how to apply the selected method to the project.

The committee reviewed and discussed pre-solicitation documents, how to establish project criteria, whether to use performance and prescriptive criteria or a combination, and design standards for each of the DB methods. The committee reviewed DB team selection and information an agency would need to pursue selection, the Request for Qualifications (RFQ) phase, the Request for Proposals (RFP) phase, formats for meetings for both pre-RFP meetings and proprietary meetings, alternative design concepts, cost proposals, interviews, and honoraria and scope of deliverables.

Major issues prompting the work was ensuring the design profession and contracting industry have a chance to compete effectively for DB, which is increasing significantly.

Within the 2015 Capital Budget, DES and the CPARB are tasked to respond to the Legislature on ways to increase opportunities for the design and construction industries to compete effectively. The guidelines should serve as the basis for that report to the Legislature.

Committee members also discussed ways to solicit participation by small, disadvantaged, and minority and women-owned businesses and the issues surrounding competitive or unfair competitive advantages, which have been an issue for some agencies in terms of whether firms involved in preparing pre-solicitation documents should subsequently be allowed or prohibited from competing. The committee discussed the process after contract price has been set. Dependent upon the method of procurement, the owner may select a DB team while not agreeing to a contract price. Different steps follow dependent upon which method of DB is pursued.

The appendix includes a list of committee members and other regular participants, industry guidelines for completing a risk assessment and evaluating the appropriate delivery method, and a series of case studies.

Oliva Yang expressed appreciation for the engagement of the industry and professions for assisting the committee in its work.

Mr. Schacht shared some observations both as a practitioner of DB and as a member of the Board. The state is experiencing continuing growth in the use of DB by public agencies. Washington State University has been a practitioner for some time, as well as the University of Washington, which has expanded its use of the delivery method. DES has utilized the delivery method and conducted a significant amount of in-house training of its team. Additionally, the industry is experiencing an increasing use of Progressive DB for a variety of reasons. The focus on best practices is important considering the growth in its use. However, there is much variation in terms of the use of DB as a project delivery tool by agencies and what the RCWs actually require. The Board should have more information about what is occurring in the industry, as well as more dialogue among industry professionals to include agencies, designers, and contractors to continue to improve outcomes.

The Board has struggled to initiate data collection, which should be pursued so the Board can receive some feedback. Another member introduced the idea of organizing a lessons learned panel at the Board level on a regular basis to provide a forum for agencies, designers, and contractors to share successes and problems. It is important for the Board to learn whether the impact from alternative project delivery is improving outcomes and how the Board could improve the delivery method.

Continuing challenges exist in how the RCWs are applied. A recent solicitation by a municipality for pre-engineered maintenance buildings was not required to undergo a PRC review as the RCWs allow the use for those particular types of projects. Mr. Schacht said after he reviewed the RFQ, he noted information was lacking in compliance with a substantial number of items required in a RFQ. He was able to refer the project to PRC Chair John Palewicz and Chair Frare who informed the agency that it was not in compliance. The agency considered the feedback and modified the RFQ/RFP. The issue speaks to the need to monitor those procurements that are not reviewed by the PRC when it is clear the agencies do not understand the RCWs. The RCWs require a two-phased selection process and in the last year, one PRC certified public agency released an interesting hybrid of a Progressive Bridging procurement. The procurement was a single-phased selection completing only a RFQ but no RFP, which was not in compliance with the RCW.

Another issue the Board would be asked to consider in September is whether public agencies are following the RCWs for honorariums. A continuing issue involves agency performance and whether agencies are prepared to conduct DB procurements, particularly traditional DB with design and price competitions. Recently, another certified agency did not sign a price competition and designated a date for the notice to proceed creating risk to proposers. The agency subsequently discovered the contract form was not adaptable and required modification. Further review discovered there was no project scope or budget alignment and the agency did not account for all budget items and lacked construction contingencies creating a five-month delay between the date of the announced notice to proceed and the actual notice to proceed date. The goal is to improve outcomes rather than dwelling on the past.

Following the work of the committee, committee leadership hopes that it does not end the best practices dialogue. Mr. Schacht recommended other mechanisms through CPARB to continue the dialogue, as well as emulating the GC/CM model. Although, the industry offers effective nationwide DBIA training on best practices, it is not specific to the state's unique procurement roles.

Finally, the Board is aware designers and contractors are worried about design and price competitions and the risks and costs versus the honoraria. After a review of the RCWs for another purpose, it appears the Board might not be applying the RCWs correctly. Mr. Schacht asked the Board several questions with respect to RCW 39.10.330(8) whereby the public body shall provide appropriate honorarium payments to finalists submitting response proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, *the public body shall consider the level of effort required to meet the selection criteria* (italicized text added by Mr. Schacht). It is not typical for honoraria to be provided for either Progressive or Bridging procurements; however, the RCW does not indicate that the honoraria applies to design and price competitions. The RCW specifically applies it to DB procurement. Whether it is Progressive or Bridging, which do not necessarily place the proposers at the same level of risk as a design and price competition, there still is more effort required than for a conventional DBB proposal. Mr. Schacht suggested the Board should determine whether the requirement for the honorarium applies to all three or to only one.

One of the interesting challenges was when Progressive was allowed to become a procurement method during the reauthorization of RCW 39.10. The language was changed to reflect that cost factors as opposed to an actual fixed construction price were required as part of a proposal. It may have been an unintended outcome, as the Board did not consider other aspects of how Progressive might impact procurement.

The next question is whether "shall consider" means shall consider the level of effort or allow a public body to determine that they "shall consider but decide not to compensate for the level of effort required to meet the selection criteria." Conventionally, most traditional design and price competitions require schematic level of submittal. All visual collateral, narrative, and the work required for a design and price competition is significantly more than a traditional schematic design package. Mr. Schacht said he is not aware that anybody pays full value for that level of effort. Typically, the compensation is 25 cents on the dollar. He suggested the Board should provide direction because clarity lacks in the language.

Mr. Maruska commented on the history surrounding the various changes in provisions in the statute while acknowledging the design industry's perspective. He asked about the process for facilitating a discussion and whether it would be through the committee or another mechanism. Mr. Schacht invited input from other committee members. Personally, he believes it is a CPARB issue and was not anticipating pursuing a discussion through the committee. The committee was tasked to develop the guidelines. The issue is a policy and an application of the statute that should be vetted by the CPARB.

Andrew Thompson moved, seconded by Steve Crawford, to include on the September meeting agenda a discussion on honorariums relative to RCW 39.10.330.

Mr. Thompson commented that as Progressive DB increases in use, there appears to be a gap, which is not being applied at the DB level. The Board has a responsibility to review the issue.

Mr. Maruska suggested the review of honorariums should not be limited to Progressive, but compared to a number of other costs to compete. The discussion should not just focus on whether to include an honorarium but relative comparisons that owners pay as overhead and marketing costs for conventional design and construction in comparison to added efforts involved in a DB delivered project.

Mr. Schacht suggested the motion was unnecessary to add an agenda item.

The makers of the motion withdrew the motion.

PROJECT REVIEW COMMITTEE – Information

PRC Chair John Palewicz reported many PRC members are also active on the Design-Build Best Practices Committee (DBBP). PRC meetings are scheduled every other month with the next meeting scheduled on May 25. The meeting includes an agency recertification, election of the Vice Chair, and three project panel presentations. He expressed concerns for scheduling the Design-Build Best Practices Committee meeting on the same day as the PRC meeting, as three active members representing large agencies would be unable to attend the DBBP committee meeting. He asked for consideration to reschedule the meeting to enable PRC members to attend. All voices on the DBBP Committee are fairly equal and vocal, leading to a great effort as members work through numerous issues. The process enables participants to consider all sides and develop solutions.

Mr. Schacht acknowledged the request to reschedule the meeting on another day.

Mr. Palewicz reported on the last two meetings of the PRC. At the March 23 meeting, members participated in one project panel to consider Highline High School's GC/CM Replacement project. The panel approved the application. The project represents a continuing trend of school districts using alternative public works. The project replaces the existing Highline High School on the current campus located near downtown Burien, Washington while maintaining operations of Highline Memorial Stadium and Performing Arts Center. Existing buildings were built between 1923 and 1989. A kitchen serves the entire school district. Hiring a contractor early to help with site logistics was deemed a good use of GC/CM.

The last meeting was a special meeting on April 27 to consider the Enloe Hydroelectric Project DB project. The project was returned to the PRC for reconsideration. The project would restore dam power generation. The project budget is \$42.5 million. The same project was approved unanimously by a PRC panel at the December 1, 2016 meeting for DB delivery. Subsequent to the approval, legal actions were filed on the lack of public notice. In a negotiated settlement, project approval was withdrawn and a new application presentation was scheduled with a new PRC panel and more extensive public notice. At the second application presentation, the project was approved unanimously. Panel members received public comments with approximately six individuals commenting on the project in addition to participation by the public through Web-X and a conference call. The panel was very concerned about hearing public comment with the understanding the panel's authority is very limited under the statute in terms of whether a project is an appropriate use of alternate public works and the team is prepared to be successful. At the end of the presentation, the project was approved unanimously.

Chair Frare recessed the meeting at 10:22 a.m. for a break.

Chair Frare reconvened the meeting at 10:32 a.m.

Gary Rowe joined the meeting via telecon.

PUBLIC PRIVATE PARTNERSHIPS COMMITTEE – PROPOSED LEGISLATION - Action

John Ahlers reported he served six years on the CPARB and worked on a number of successful legislative bills with the Board and other industry volunteers. Two years ago, he was asked to address public-private partnerships (P3). At that time, some ongoing discussion by the Administration focused on future tax incentives for investors in infrastructure projects. Some individuals in the industry suggested Washington State legislation for P3 was not effective and encouraged him to craft a statute for both infrastructure projects, as well as building projects. At that time, he offered a motion to form a committee on Public-Private Partnerships. As Chair and with the support of many in the industry, the

committee drafted a P3 statute for the industry as a whole. The committee studied other state's successes and failures and solicited input from the entire construction community of owners, subcontractors, small businesses, disadvantaged businesses, and general contractors to develop an effective statute. The proposed statute represents two years of work with hundreds of hours of discussion by many constituents to strike a balance between the various groups. The document achieved a fair amount of consensus by the committee. Although 100% consensus was not achieved, the documents represent a fair balance. The Board is asked to accept the draft statute [new proposed section for RCW 39.10 as 500 section series] and forward to the Legislature. Additionally, the federal government is planning to focus on infrastructure and likely will try to incentivize private industry in infrastructure. The proposal is timely for the state to have an opportunity to take advantage of the procurement option.

Mr. Ahlers stressed the importance of the Board pursuing a public procurement statute as the work completed by the committee was vetted by many members of the CPARB.

James Lynch reviewed many of the important elements of the proposed statute. The committee included a substantial amount of both local and national expertise. Several industry experts are available to answer questions from the Board.

Mr. Lynch referred to a report summarizing the work of the committee and outlining what P3 entails and what the Board is requested to pursue. The report serves as another tool kit for public owners in the state, as well as an explanation of the mechanics of the actual legislation the committee is recommending for approval.

Mr. Lynch reviewed key features of the proposed bill. Most of the provisions in the legislation relate to procurement. The proposed bill draws on model legislation and statutes adopted by other jurisdictions. P3 is a flexible methodology with many possible iterations. However, the most important aspect was ensuring that when implemented, it is completed in a balanced and conservative manner protecting public interest, interest of the participants, and it provides value to the owner. Procurement is either a one or two-step procurement process. In most cases, it would be a two-step process. The committee debated allowing a one-step process. However, there was recognition that there could be a project in the future where a one-step RFP might be appropriate. Provisions in the legislation address honoraria. The proposed legislation closely follows the DB statute in terms of honoraria. When honoraria is specified, the owner must follow through and must clarify if and when the honoraria may be withdrawn. Another provision recently added is the opt-in provision whereby owners implementing methods that are similar to P3 through different financing arrangements would still be available to owners. The legislation is an addition to the tool kit rather than a takeaway.

The largest section of the statute is the terms covered in any P3 contract. The provisions cover basic contract provisions that should be included in all contracts to specific coverage for minority, women, and disadvantaged businesses, labor, and other considerations addressed in all contracts.

Committee members stressed the importance that the property involved in the transaction in any P3 arrangement is public property and returned to the owner upon completion. Some owners can use that provision to secure more value from the arrangement by dictating the condition of the returned property at the end of the agreement. For a number of reasons, that provision was important to the committee.

In terms of funding and financing – a key feature of P3 legislation, the proposed legislation is flexible as an owner can combine private financing or funding, public funding, existing bond capacity, or obtain grants and bonds from the state or federal government. The legislation specifies that the method can be combined as determined by the owner. The proposal includes a number of free-standing provisions to ensure specific interests are protected. In several sections, protections are included from procurement through the contract requiring payment of subcontractors, suppliers, and laborers, to include payment bonds with references to Title 38 for prevailing wage requirements.

Additionally, architects on the committee requested the proposal clarify that design professionals would be considered as a subcontractor.

One major change was prompted by a number of discussions on the inclusion of small, disadvantaged, minority-owned, women-owned, veteran-owned, and other underutilized businesses. Previously, the legislation allowed the owner to consider those factors in the selection and in the contract. The current proposal mandates those requirements by requiring

owners to include participation plans as an evaluation factor, and the owner must include and address participation plans in the contract. Some discussion followed the last committee meeting on the term “outreach” with several individuals recommending substituting “plan” to ensure each proposer is required to submit a specific plan for inclusion in the RFQ/RFP stage with the contract required to include a specific plan for inclusion.

Committee members discussed the project review process with the process undergoing refinements over time. As proposed in the legislation, a new PRC subcommittee would be formed with areas of expertise, as well as stakeholder representation to include specific financial expertise and individuals with expertise in P3s. The subcommittee would review each P3 application and submit a recommendation to the CPARB with the CPARB rendering approval or disapproval of the application. An additional provision clarifies some of the more recent topics in terms of the PRC. The decision would be related to the delivery method with separate bid provisions requiring public notice and the normal political process by the owner to determine if the underlying project is a good P3 candidate. The proposed legislation includes a pilot period of four years with a maximum of four projects each year with a charge to the CPARB and the PRC to review PRC projects to encourage a mix of different types of projects (vertical, horizontal, size, or type of project). One clarification not submitted in the draft is that the owner could include participation plans, programs, and goals currently available today. Additionally, even if private financing is used for a P3 project. The owner would have full flexibility to implement whatever programs they might have in place, such as broad participation by the industry. The proposed legislation does not purport to expand or contract what is currently available under law, but does clarify that the flexibility is available for P3 projects for owners. Mr. Lynch added that it is his personal view and likely that of the committee that the draft legislation represents balance.

Chair Frare invited questions from the Board. He acknowledged the attendance of Gary Rowe via telecon.

Chair Frare asked why an owner would pursue P3 over DB or GC/CM. Mr. Lynch replied that the committee discussed that point of view at length. P3 projects are typically larger projects; however, in Canada PE is used much more. Typically, the project is large and has a long-term operation and maintenance component. Some key factors for selecting a P3 delivery method include owners having no similar prior projects, requiring an increase in staffing and resources to operate, the project is experiencing a funding gap, or the funding stream is not available to meet the public need. It is a misconception, but also true in many cases that if the project is a revenue-producing project, P3 is often a more attractive option. However, many P3 projects have no revenue component and the value is the shift of risk in long-term operations and maintenance by paying over the years rather than upfront.

Chair Frare noted that under DB and GC/CM, the statute requires a project of at least \$10 million. He asked why the draft legislation did not include a minimum project cost. Mr. Lynch replied that P3 is self-selection to a great extent because most P3 classic models would not be viable unless the cost meets the threshold. However, some instances could occur where there is a small asset and the owner prefers not operating the asset long-term where a P3 arrangement might make sense. However, those types of projects are unlikely and not likely included in the pilot program. During the pilot program, the CPARB would determine the mix of P3 projects, which could include some smaller projects. .

Chair Frare asked about the definition of the provision requiring a “*Statement of Justification.*” Mr. Lynch said the provision speaks to the public body providing public notice of its intent to pursue P3 for a project. The notice invites public comments on the proposed P3 project.

Aaron Toppston, Walsh Group, addressed questions on the size of P3 projects and the statement of justification. Practically speaking, most P3 projects are valued between \$75 million to \$100 million. The high value of the project speaks to the complexity of the project. Most successful P3 projects are technically complex or are of sufficient size to take advantage of economies of scale. His company worked on a P3 project in Pennsylvania that consisted of 558 very small single two-span bridges located across the state. The project was able to take advantage of economies of scale with delivery of each bridge approximately 20% less than the cost the state DOT would have been able to deliver. The other component is project complexity particularly in the interaction between operations and maintenance. The Walsh Group is an investor and a design-builder of a project over the Ohio River. That P3 project offered a solution technically during the design phase and it also provided the lowest life-cycle cost for the design. Those types of complex projects lend themselves best to the P3 delivery method.

In terms of the public comment process, one element that is helpful is interaction between the potential procurement agency and the market at-large (architects, engineers, contractors). Public noticing provides information on the potential opportunities to procure P3 and it creates an early pre-procurement opportunity for dialogue around whether the project makes sense collectively and whether it provides the best solution for the taxpayer. The process is important and occurs well before the official procurement and RFQ is initiated. Dialogue at the onset tends to benefit the owner to help flush out whether P3 is the right procurement method.

Chair Frare said the proposed legislation speaks to P3 allowing for unsolicited proposals but also requires a competitive process. He asked how the process of both unsolicited and competitive proposals would work. Mr. Lynch replied that in some states, an unsolicited proposal is allowed and owners can accept them. The intent is to enable the private industry to identify a project, a need, or a value that they could add by offering a proposal to be the successful contractor. The committee sought value in allowing the private industry to offer unsolicited proposals, but was uncomfortable with owners hiring proposers directly without completing the competitive process. The compromise was allowing the private sector to submit a proposal to an owner; however, the owner would not be required to accept the proposal but would pursue the RFQ/RFP process. From an owner's perspective, that process would not be different from a standard procurement except that much of the upfront work by the owner would have been completed. The private sector would prefer to propose and obtain a project without completing extra steps. The committee discussed a particular example of several states that have a hybrid approach. Several members representing different private sector firms had submitted unsolicited proposals on two projects in different states. Each proposer was awarded the other's proposer's project. That process eventually provides balances while also some benefit as it does allow the private sector some opportunities. However, the committee wants the owner to control the process and determine policies and objectives. The legislation does not require the owner to act on any unsolicited proposals.

Chair Frare shared that some of his concerns surrounding P3 is the financing aspect. One of the provisions speak to submittals that are required to be reviewed by the PRC. The provision speaks to preliminary business case analysis and value for money analysis, if any. He questioned the intent of adding "if any." Mr. Lynch responded that the provision was extensively discussed by the committee. The language, "if any," relates to the value for money analysis. The formal "value for money" is a term of art in P3 that can be completed at different stages. The PRC application is quite early in comparison to when a full blown formal value for money analysis would be completed. In many instances, the analysis would be preliminary. The provision allows for those rare circumstances where the owner has the financial analysis but is not prepared to present a value for money analysis. It provides the owner with more flexibility. Should the proposed experts designated on the PRC not receive the financial analysis, it would not reflect well for the application and financial questions would likely be asked. That would serve as a back check on whether the owner has completed a value for money analysis or completed their financial due diligence. If the owner has the ability to provide a good answer, the PRC process allows for the flexibility for the owner to proceed and the PRC to approve the project.

Chair Frare asked how P3 financing affects the overall debt obligation of the public body. Mr. Lynch said the issue was addressed early in the initial draft, but some provisions were removed as the P3 statute does not purport to answer that question because each case would be different and require the owner to discuss financing mechanisms with financial managers, legal counsel, and perhaps with the Treasury. The answer will be different for each project. Chair Frare asked whether it is assumed that the PRC would not be responsible for financial checks and balances. Mr. Lynch replied that the PRC would not be taking it on, but even more broadly, the legislation does not consider that aspect as the proposed legislation does not address the issue because of constitutional limits and questions. The intent is avoiding the creation of any constitutional or statutory conflicts. The owner would follow existing laws given the financial flexibility afforded for P3 projects.

Chair Frare supported the expanded list of representatives on the P3 PRC. He asked for more information on committee members who would have the expertise to determine if a project is financially viable from an operational standpoint for repayment of debt. Mr. Lynch said one of the positions would be occupied by a P3 expert who has completed similar analysis. The CPARB would have to be careful when selecting candidates to fill that position to ensure the person has the P3 expertise. The P3 PRC requires the seating of experts in public policy and private finance who would have the expertise to complete the analysis.

Chair Frare asked about P3 project accountability in the event of a default by the P3. Mr. Lynch said liability is one of the biggest values of a P3 method. P3 projects often have a full security package beyond bonding and often includes links to the lender, traditional bonds, letters of credit, or it is addressed in the contract. The contract structure and the owner requirements address the risk. Additionally, a freestanding provision in the statute stipulates owners have the right to take over the asset or hold the contractor to the bond. During the construction phase, traditional bonding protects the owner similar to other projects. For operations and maintenance, the contract structure should spell out that any default results in the owner not paying assuming ownership and control of the asset. If the contract cannot be structured to adequately protect the owner, P3 is not appropriate for the project.

Mr. Hernandez requested a review of recent changes to the draft legislation.

Mr. Lynch reviewed the change to [proposed] RCW 39.10.500 (e) stating, “*Design-Build-Finance-Operate-Maintain*” means a project delivery in which a Public Body enters into a single contract for design, construction, finance, maintenance and operation of a Public-Private Facility over a contractually defined term. No public funds shall be appropriate to pay for any part of the services provided by the Concessionaire during the Agreement period except as provided in the Request for Proposal and final Public-Private Agreement.” The addition of “*final*” recognizes that the draft contract that may be in the RFP may be different after negotiations and the final P3 contract.

Mr. Hernandez asked for affirmation that there would be negotiations during the RFP process prior to the award. Mr. Lynch said in some cases, there would be negotiations. The committee spent half a meeting discussing that process and determined that in some cases there would be negotiation and in some cases there would be no negotiations. The process is flexible and requires the owner to lay out the process in each case, but it is not prescribed.

Mr. Lynch said the second change to [proposed] RCW 39.510 (a) provides additional clarification that speaks to [Chapter 39.19](#) and how OMWBE applies to a P3 agreement regardless if funded publicly or privately. Mr. Hernandez asked for more specificity in terms of how RCW Chapter 39.19 would be applied. Mr. Lynch responded that the OMWBE program applies to P3 projects through the requirements contained in Chapter 39.19. The intent is to prevent the use of the chapter as an end-run around OMWBE when private funds are used.

Mr. Ahlers added that it also ensures that requirements normally required for public works projects are required for P3 projects.

Mr. Lynch added that in some other municipalities adopting P3 legislation earlier, those requirements were loosely applied because private financing was utilized. It was important to ensure the requirements apply to all P3 projects.

The next change (page 7) to [proposed] section 520 (b) clarifies that regardless of whether private financing or funding is used, the owner’s programs for DBE or OMWBE participation shall be applied to a P3 project. It does not expand or contract what the owner can otherwise do, but it does clarify that any existing programs can apply to the projects.

Rebecca Keith commented that some cities, to include the City of Seattle, have their own inclusion programs that may be different than the state’s program. Applying Chapter 39.19 could be interpreted as the state’s requirements applying. The language appears to reflect that other jurisdictions would be following the state’s program while the new language is intended to reconcile the different programs. Mr. Lynch affirmed the inclusion of the language would enable the owner to follow its programs. Ms. Keith recommended additional clarification as the first reference to Chapter 39.19 might create some ambiguity. Mr. Lynch affirmed the section would be reviewed and clarified to eliminate any confusion.

Mr. Lynch reviewed the next change clarifying [proposed] RCW 39.10.520 (c) (6). In the list of requirements that are included in each contract, the committee’s intent was to include a security package. The change clarifies that it is not just the Concessionaire or top level entity’s performance that is being secured by the security package, it is the entire performance of the contract to include default by the Concessionaire or its subcontractors.

As mentioned previously, the next change on page 9, [proposed] RCW 39.10.520 (c) (9)(iii), clarifies that participation plans need to be included in each contract in the RFQ/RFP process.

The proposed change on page 11, [proposed] RCW 39.10.570 (d) states, *“Participation plans for small business entities, disadvantaged business entities, veteran-owned businesses, minority and women-owned business, and any other underutilized businesses as the Public Body may designate, and compliance with RCW Chapter 39.19 ensures that every contract covers the topics and that the owner must ensure they are covered.”*

The final proposed change on page 14, revises RCW 39.10.580 ((d) by replacing *“promote”* with *“include”* within the last sentence of the provision. The provision does not specify the levels of participation, as they could be different with each project, but that participation must be addressed and there must be a plan.

Chair Frare asked for the Board’s indulgence to either defer some agenda items or provide some briefing papers on some of the topics to afford adequate time to review the proposed legislation. Teresa Berntsen recommended deferring the presentation on the Report from the Governor’s Diversity Subcabinet rather than issuing a briefing paper. Members agreed to defer the appointment of members to the JOC Evaluation Committee to the afternoon session of the meeting.

Alan Nygaard commented that because of the size and complexity of P3 projects, a four-year pilot program might not be sufficient to help inform whether the project was or was not successful or even identify some of the nuances to make adjustments to the statute. Mr. Lynch said the four-year period was recommended as a training period with the idea of the CPARB and the Legislature revisiting P3 within that timeframe. As many P3 projects can span between 20 to 50 years, it may take time to document lessons learned. However, a four-year period is the typical time to complete a P3 project and affords an opportunity for the CPARB and the Legislature to revisit any issues.

Ms. Berntsen asked whether the committee reviewed the proposed legislation with the Office of the State Treasurer. Mr. Lynch said the legislation was not reviewed by the state other than he has had a number of discussions with members concerning the effectiveness of the CPARB and the P3 Committee to ensure industry representation, compromise, stakeholder interest, and technical project delivery. This legislation focuses on those components and provides a back value as an advisor to the Legislature. The proposed motion directs approval of the draft by the Board for forwarding to the Board’s legislative representatives to pursue the next steps with the Office of the Treasurer, Code Reviser, and next steps of the political process.

Ms. Keith mentioned the concerns surrounding the first draft last fall and expressed appreciation for the good grace and composure by the committee to consider all the concerns while reworking the draft. Although the draft is not perfect and not everyone would be happy, she is supportive of the changes that clarify participation plans as long as the legislation does not mandate quotas; however, she would like to follow up on the issue surrounding reviews by the Treasurer and the issues raised by Chair Frare concerning the financing aspect and that specific review. Some revisions addressed those concerns; however, the draft implies that there are certain types of financing options that have not been completely vetted at an adequate level. Other questions surround the incentive payment model as opposed to revenue models and whether it means that the municipality or other public entities must count those models as a debt if there are incentive payments over a set period. She asked for more information on the vetting of the financial aspect of the proposal.

Mr. Lynch advised that the proposed legislation defers those questions as each situation would be different for each owner. The proposal does not impact what is available under existing law. The legislation should not address whether an incentive-based model includes making payments over time because if it did, the legislation could create the potential for constitutional conflicts. Basically, if legal according to the statute, the owner should consult with legal counsel, the Attorney General’s Office, or the Treasurer to review the model under consideration to determine if it affects debt limits.

Mr. Ahlers added that essentially, the financial models were beyond the committee’s expertise.

Ms. Keith asked whether it would be appropriate for the CPARB to recommend the inclusion of some financial caveats. Mr. Ahlers said the motion envisions moving the draft to the Treasury’s Office for vetting by financial experts. The proposed legislation essentially is a framework for the procurement of a project designed for either public or private financing or both. The framework has been vetted by many experts in the industry. During the legislative process, draft bills are typically modified.

Ms. Keith emphasized that the CPARB considered the components of a GC/CM contract, which also requires a particular area of expertise. That process was utilized by the CPARB in its recommendation. At this point, the committee appears to be conveying that level of expertise is not available and is seeking the CPARB's recommendation.

Gary Rowe (*telecon*) said he was unable to attend the meeting. He has considered what rationale makes sense for the Board to move forward with the proposed legislation. Up to this point, he believes the ball has been carried very well by the P3 Committee. It is time to forward the proposal to a legislative subcommittee for them to develop costs and to solicit input from others involved in the process, and to incorporate that input into a legislative bill for introduction. The proposed draft is not perfect and continuing to strive for perfection only means the bill would likely never move forward. It is time to consider forwarding the draft for the next phase to receive input from other stakeholders and state agencies to move forward to the legislative process.

Santosh Kuruvilla thanked Mr. Lynch, Mr. Ahlers, and the committee for its work. He had an opportunity to speak with some members of the engineering community and professional engineering associations who were familiar with the new draft proposal. Generally speaking, the two major concerns surround potential erosion of design excellence. The concern does not reside in the first year but is a greater concern in the second tier of engineers, subconsultants, and small businesses. It could be a significant barrier and a hardship for some specialty consultants. He asked for input on how the committee addressed those concerns. Mr. Lynch said the concerns were addressed during the last several meetings. The committee has an appointed architect representative who provided some changes to the draft. As with so many provisions in the proposed legislation, there is a balance of all considerations. Many of the proponents and salesmen of P3 indicate better design excellence from a P3 project because there is a closer relationship between design professionals and end users. End users have a financial incentive to ensure the design is the best and most efficient as possible. Another aspect is that design professionals are a cost item under a general contractor and could possibly be treated as another subcontractor because the contractor wants the cheapest possible design for the money. Similar to DB, there is no perfect solution to that issue. It is true that most P3 projects would be implemented by large concessionaire bodies with a level of sophistication among those players. The concessionaire would be operating the project for the next 30 to 50 years in many cases and likely would consider and treat the design professions similar to an owner rather than in the DB scenario where the design-builder's cost concerns are mostly upfront. It is not a perfect fix, but it is something the committee discussed at length to ensure there were protections through honoraria and performance measures. It is a component of P3 projects that is present and sometimes it is effective and sometimes it is more difficult.

Mr. Thompson commented that quality-based selection under the DB delivery method with a warranty is different than for a P3 DB, Operate, Finance, and Maintain framework. Quality would be a business decision for the contractor during the development of the team. Architects and engineers would have higher expectations from the general contractor because of the operation and maintenance components.

Mr. Santosh replied that the devil is in the details. He asked how those protections are infused within the proposed legislation. Mr. Thompson said it speaks to being a business decision between the contractor and the specialty consultants to ensure selections are not just based on low bid but are based on best design.

An unidentified audience member provided additional information to address the concerns of Mr. Santosh. Having completed several P3 projects, he has addressed similar questions. As a representative from the facilities side of the business, interaction begins at the design table with the operator who would be responsible for the project for the next 30 years and who wants to ensure the project is delivered to the client's requirements necessitating early discussions on the design. Concurrently, the concessionaire as the investor, is interested in developing the project based on best value. It is possible to maintain a cheap or a good building – it is a question of how much money is spent and where. However, from the client's perspective, it is performance-based. As an owner, project performance is important by spending less time on how the project is completed and more on what should be done. It is really a question at the design table with the operator, builder, and the concessionaire working together throughout the procurement process.

The speaker referred to the prior questions on the incentive-based model and how that could be documented on the books. In the early days in Ontario, Canada, there was an incentive model. The incentive model was really more of a disincentive based on the maximum of the project cost with deductions for the payment and for non-performance.

Contrast that model to the revenue model, which is a different scenario and most of which are established on a gain share/pay share approach whereby when the project performs better than anticipated, profits are shared.

Mr. Schacht commented that should the Board move forward with a motion, the Board could have dialogue about whether there is support for the motion. He suggested identifying the motion so the Board has a clear definition of the proposal to aid in the discussion.

Representative Buys commented that as the representative likely tasked with presenting the proposal to the Legislature, he would be willing to offer a motion.

Representative Buys moved, seconded by Robert Maruska, to move the proposed language as amended in the redline draft forward to the Legislature for a recommendation.

Chair Frare expressed appreciation of his conversations with Mr. Lynch to address many of questions. He is however, concerned about the finance aspect of the proposal, as well as review of the financial aspect. The proposal is a bit of a catch-22 situation whereby the Board needs to act on a proposal to enable discussion within the industry. He is hesitant to approve the proposed legislation as written, but would like to authorize the Board's legislative representatives and members of the committee to begin stakeholder efforts on the proposal on a broader basis to include the Treasurer, Office of Financial Management, and the Governor's Office to begin working through the legislative process. He would be willing to support a motion that speaks to those concerns.

Mr. Nygaard said he supports the motion and believes the committee has done an excellent job of listening to the Board's concerns. As a finance professional who has issued debt for cities, ports, counties, and universities, it is a complicated world and he does not believe the Board could address those issues in a statute that covers the entire industry. Whenever any entity enters into a financial agreement, there is a world of IRS rules, federal rules, and state rules that address those kinds of issues. He would not be surprised if at the end of the day, it is not too dissimilar to the proposal as presented today. It is not possible to second-guess the finance world. Having legislation that is silent on the issues would be a more appropriate approach. From a higher education standpoint, the University of Washington has some good opportunities to take advantage of P3 legislation. The University has many properties but lacks the need to fill the entire occupancy of a building. Enabling the University to occupy a portion of the building and having the assistance by the private sector to assist with occupying the remaining section of the building presents a good opportunity. The University has satellite research facilities on properties all over the world and having a tool for local communities to provide services provides another opportunity for the University to procure the needs of higher education.

Bob Armstead, National Association of Minority Contractors (NAMC), asked whether the Board would entertain public comment prior to voting on the motion. Chair Frare advised that the time for public comment is now. Mr. Armstead reported that minority contractors have experience with P3 all over the country beginning at the national office to state chapters. Personally, he has more questions now based on the conversation than previously. He also has a background in finance and has worked on large public agency projects. He has some concerns with the proposal. He questioned how the Board would proceed without first having answers and shared information on an article published May 9 on a public-private infrastructure project proposed in Texas that was rejected. It is important to note that Texas has the second largest budget and requirements for P3 projects. For a state with nearly \$300 billion in projects to reject P3 speaks to the importance of the Board to know and understand those reasons for the rejection. Some reasons in the article surrounded similar comments of consolidating 500 bridges into one project. The organization represents not only construction contractors but consultants, engineers, architects, suppliers, and developers and they are all left out. As mentioned in the report, P3 projects are not effective in low income communities. In rural areas, P3 projects do not work because value is lacking. He is concerned about P3. Like most members, his constituents participate in projects. In the financing arena, the comment that if the project is not successful, the owner can assume the asset essentially means the responsibility falls on the public. There have been bankruptcies where the private partner determined that because of the state of the project it was not in their best interest to continue. The requirement for inclusionary aspects allowing entities within the state to use their particular inclusion plans as opposed to adopting the state's OMWBE plan is troubling. Some entity plans are okay and some are not. The association would be very concerned about having that option available to entities.

Ms. Berntsen commented that any proposal that involves a public works project with a private developer model has mechanisms in place to ensure utilization of small businesses. It is a priority reflected in state law and by the Governor. She expressed appreciation for the grace and the dialogue about that, as well as the attempts to address those issues with the redline changes. The proposal is a complex piece of legislation and she has not had time to evaluate whether the proposed changes address those concerns. Layering on top of those issues is a recent opinion from the Attorney General about the law known as I-200, which adds a layer of complexity to the proposal. Additionally, Chair Frare's questions concerning debt raised some similar issues for her as well.

Mr. Schacht shared his perspective about what Washington State architects perceive about the proposed P3 legislation. He has spoken to many design professionals and he has yet to find an architect who favors P3. There likely are architects in the state or architectural corporations in the state that support P3; however, he has not engaged with any architect that supports the proposal. Architects believe P3 is another step to marginalizing their role as design professionals in projects. Architects have come to terms with DB because of the one-to-one connection with the contractor and the direct relationship with the public agency. However, in P3 projects, architects are removed one more time. Architects also believe the architect's qualifications during a DB selection process is equal to different contractors. In P3, architects are behind the developer and the contractor with design professionals serving a smaller part of the equation. The issue of design quality was also addressed and many architects view design quality as a much broader role in terms of the project scope, why the project is needed, the nature of public space, and the relationship between public facilities and surrounding communities. Those are the overarching design qualities and the reason for training as professionals. Architects are not confident that the financial perspective of the project's organization would really achieve the end result of a quality project. Additionally, there are concerns surrounding the potential for small businesses and disadvantaged businesses to take advantage of public projects and innovate and grow as businesses. While true there are some good provisions in the proposed legislation indicating there is plenty of room for second tier players, there are many engineering and architect consultants who play first tier roles and serve as the primary consultant on a project. In the instance of P3, a relationship is most often required with the developer. The risks are also much higher in terms of what the architects are pursuing. Although the legislation may create an opportunity for participation, would that opportunity also enable firms to grow and develop and become successful entities. He is conflicted about the legislation although he understands Mr. Nygaard's examples in terms of benefitting the University of Washington. Sound Transit's project would be of substantial importance to the Puget Sound area especially since the agency is limited in securing funds through revenue collection. P3 provides an opportunity to accelerate that for the agency, which would be a tremendous benefits for economic growth and sustainability. He is not blind to the potential benefits of P3 but also views it as one more move toward large corporatization of public works occurring in the community, which is contrary to the pioneering spirit that has represented Washington State's success over many years.

Irene Reyes thanked Mr. Lynch and the committee for all their efforts. She is not thoroughly convinced with the process in terms of participation and inclusion of plans even though the language was changed for minority and small disadvantaged businesses. She is still disturbed that the committee did not provide requested information on the failures of P3 projects. It is important for the Legislature to understand that combining large corporations with the public sector tends to lead partnerships and excludes smaller companies and minority companies. She believes the Board is not onboard, transparency is lacking as well, and the inclusion plans and language is not sufficient and is too lame. The legislation should include percentage goals for inclusion of minorities.

Mr. Ahlers addressed the concerns. The committee has tried in the draft legislation to go as far as possible within the current legislative restrictions in the state. Some might insist that the draft exceeds the line by the mandates in the proposed legislation. The request is beyond the ability of the CPARB or the committee to fulfill as it would require a statutory change. Secondly, some type of P3 legislation will pass in the state as there are other entities pursuing legislation. The proposal represents an opportunity for the CPARB to have input as to the type of statute the state would eventually adopt. Another group will pick up the draft and perhaps not be as inclusive as the proposal intends. If the draft does not suffice, the Board should convey such to the committee to avoid wasting time in the future. All the naysayers have had their input considered and the committee has produced a document to the extent possible. If the Board does not recommend the proposal, members would understand; however, there will be another group moving P3 legislation forward. It is time to take a vote and move the proposal off the Board's agenda and to the Legislature. He expressed appreciation to all committee for their efforts and work on the draft proposal.

Mr. Hernandez said the proposed changes are a vast improvement. He does not believe the proposed legislation is drafted to cure the problems that I-200 has created. That is usually handled at the executive branch level. The state has a disparities study pending. If discrimination is found, executive branches through the government will impose restrictions. The legislation as written imposes a requirement for inclusion while still enabling flexibility if and when the state imposes more requirements for spending a specific amount of funds for small businesses, minority-owned, and women-owned businesses. Other parties will present another version of the bill to serve specific agendas. Considering that this effort included a broad base of stakeholders, the draft legislation is the best in terms of minority inclusion. He is not familiar with any state or federal law where it is legal for the statute to require a certain percentage, as it is usually a directive from the executive branch that dictates a certain percentage of funds allocated to small businesses.

Mr. Crawford thanked the committee and acknowledged the proposal is one of the most frustrating pieces of work that he has encountered during his tenure on the Board. The proposal represents a good strong outline from which to develop final legislative language. The draft is balanced, well thought out, and represents a tool that could provide benefit to some projects and some agencies. P3 will not rip the rug out from everything else but will definitely slow implementation. He also believes the Board would never reach a point where the draft is perfect to move forward. Financially, the ability of each individual agency will vary. It is not in the purview of the draft to define all possibilities. It is time to move it forward and add the expertise of the executive treasury branches to flush out the details.

Ms. Reyes added that a legal opinion has been rendered by the Office of the Attorney General on the inclusion of MBE and I-200. Pro small business or certified company legislation recently passed (*HB 5734 and HB 1861*) regarding bonding relief. Governor Inslee has committed to spending 10% on MBEs.

Mr. Lynch commented that the pilot program addresses some of the risks of P3 and the concerns raised during the review. Additionally, all four of the pilot program projects each year would come before the CPARB and the P3 PRC prior to implementation affording an opportunity for the Board to evaluate whether P3 is the appropriate delivery method for each project. Those reviews would be in context with the owner and the project with the Board able to ask those questions in terms of percentage of inclusion, architects, and how the team would be evaluated. All the Board's questions would be addressed before each project as those issues are not able to be legislated because they will differ with each project. The process provides a general framework and narrows it to people who are politically accountable and have the expertise and the wherewithal to ask the questions.

Mr. Armstead commented that there is negative impact from P3, which everyone will need to face. The issue is what can be done to improve the situation. Taking 500 bridges and giving them to one contractor leaves out architects, engineers, suppliers, and others because they would be unable to compete.

Mr. Thompson said that as a member of the Board for the last three years he realizes that there are four legs to the stool to include labor, architects & engineers, contractors, and public owners. However, the fifth leg is the people in the audience who weigh in, as well as the small business and minority community. The P3 committee worked as hard as possible to account for many different stakeholders in the draft legislation. Through the process, members modified some areas. However, if there are certain sections where the envelope is pushed with respect to what can be done for small disadvantaged community, it is against the edge of what the state would allow in legislation. The P3 committee worked diligently to address those concerns specifically. He offered to spend more time with those with concerns to share the nuances of what is important.

The motion was restated.

Ms. Keith addressed public comments. One of the issues that might have been overlooked with respect to checks and balance in the legislation is that the proposal is an opt-in climate where a public body affirmatively determines to move forward with a P3 project. There are requirements for a public hearing process for each project that would determine whether P3 is in the best interest of the public. The legislation requires notice and public comment, as well as the public body is required to respond to the comments. The concerns raised during the public comment would likely come forward with some members of the public conveying to the public body that the project is not in the public interest for stated reasons. That is a critical check and balance that should not be overlooked.

Don Laford, Construction Management Association, acknowledged the comments but pointed out that people are forgetting the top line. Without P3, there might never be a project because the public entity typically does not have the financing to move ahead. P3 provides a tool to move forward with a project. At least it provides an opportunity to have a project that is reviewed by the CPARB to address all the issues raised during the review. He recommended moving forward with the vote.

Mr. Nygaard agreed. Public owners typically can borrow money at less cost than the private sector, as well as meeting all the requirements in terms of permitting and wages. If the public entity can pursue a project independently, it makes sense to move forward; however, if unable, they need to look for partnerships to move forward. The legislation should be viewed as an opportunity for owners to participate because it expands the opportunity for all stakeholders to participate as opposed to restricting them.

Jerry Vanderwood, Association of General Contractors, encouraged the Board to move the proposal forward. The legislation is all about projects that otherwise would not have been constructed. This is one way to build them. As generous as the statement was in the transportation package, there already has been many arguments of what was left out. The proposal is one way to address those projects.

Mr. Maruska added that from the perspective of public ports and the Port of Seattle, there is a distinctive advantage for using P3 through leasing arrangements or other financing methods. There are many different business reasons for structuring specific arrangements to provide the quality of jobs and the economic benefit to the community and the region. P3 is not for all projects because there are many criteria to determine if joint financing makes sense. It is important to have the tool in the toolbox. Because of some enabling statutes affording different flexibilities in the state, having the ability to be more innovative in a limited area of practice would be beneficial. He encouraged members to consider the many opportunities as the proposal moves through the legislative process for input. If the Board does not take the initiative and move it forward, somebody else will pursue legislation. If the federal government develops some incentives for P3, the state needs to be able to consider those opportunities as owners to capitalize on those opportunities. Although not a perfect bill, two years of efforts and compromise is a good place to initiate the legislative process, which will be difficult. He supports the motion.

Chair Frare acknowledged the good work of the committee. He supports the P3 concept and enabling projects to move forward for specific situations. However, he is not in a position to approve the draft legislation and would avoid endorsing the proposal as presented as he prefers a review of the proposal by the Legislature and the Governor's Office. Until the draft moves out of committee, those reviews cannot occur. He asked Representative Buys to consider an amendment of moving the draft legislation from the committee and allowing for further stakeholder and executive and legislative branch reviews.

Representative Buys declined the friendly amendment as the purpose of moving the proposal forward to the Legislature is to undertake those reviews by the executive branch and agencies.

Chair Frare asked about the extent of stakeholder review between May and January 2018. Representative Buys replied that after the draft is reworked as a legislative bill and introduced, the bill become public and begins a review with all stakeholders. Should the CPARB move forward with a recommendation, he offered to forward the proposal to staff next week to begin formatting the proposal into a bill format followed by introducing the bill. None of the public hearings and similar activities would not begin until the next legislative session. Additionally, it is also somewhat misleading to convey that there has not been any stakeholder outreach and work throughout this process because there has been several years of tremendous outreach. The next phase of the review process will be even broader because not everyone knows about or understands the CPARB or the P3 Committee process. Once it is released into the legislative sphere there will be more public knowledge and the ability for people to become interested in the proposal.

The question was called by Chair Frare and seconded by Steve Crawford.

The motion was restated.

The motion carried (11-3). Those in support were Rebecca Keith, Charles Horn, Bill Frare, Andrew Thompson, Alan Nygaard, Steve Crawford, Walter Schacht, Joaquin Hernandez, Robert Maruska, Brent LeVander, and Gary Rowe. Those opposed were Irene Reyes, Teresa Berntsen, and Santosh Kuruvilla.

Chair Frare adjourned the morning session at 12:30 p.m.

Staff & Guests

John P. Ahlers, Ahlers Cressman
Bob Armstead, NAMC
Talia Baker, DES
Doug Benjamin, Walsh Group
Rodger Benson, Mortenson Construction
Nancy Deakins, DES
Alyssa Englebrecht, Smith & Lowrey
Bryan Eppler, UMC
Valerie Gow, Puget Sound Meeting Services
Warren Johnson, Walsh Group
Jeff Jurgensen, OAC
Aleanna Kondelis, City of Seattle
Don Laford, CMAA

Ken Leland, AHBL
James Lynch, Ahlers & Cressman
Mark Lyon, Office of Attorney General
Colm Nelson, Foster Pepper
Elana Oguiza, WPPA
John Palewicz University of Washington
Greg Radom, Mortenson Construction
Larry Stevens, NCAWW/NECA
Josh Swenson, IUOE L#302
Aaron Toppston, Walsh Group
Jerry Vanderwood, AGC
Olivia Yang, Washington State University

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Afternoon Session Minutes
1500 Jefferson – Presentation Room
Olympia, Washington
May 11, 2017

MEMBERS PRESENT

Bill Frare (*Chair*)
Andrew Thompson (*V. Chair*)
Steven Crawford
Neil Hartman (*for Lee Newgent*)
Joaquin Hernandez
Charles Horn
Rebecca Keith
Santosh Kuruvilla
Brent LeVander
Robert Maruska
Scott Middleton (*for Mike Shinn*)
Alan Nygaard
Irene Reyes
Walter Schacht

REPRESENTING

State Government
General Contractors
School Districts
Const. Trades Industry
Private Industry
Insurance/Surety Industry
Cities
Engineers
General Contractors
Washington Ports
Specialty Contractors
Higher Education
Private Industry
Architects

MEMBERS ABSENT

Teresa Berntsen
Rep. Vincent Buys
Greg Fuller
Senator Bob Hasegawa
Ty Heim
Lee Newgent
Mark Riker
Rep. Steve Tharinger
Vacant

REPRESENTING

OMWBE
House (R)
Specialty Contractors
Senate (D)
Public Hospital Districts
Construction Trades Industry
Construction Trades Labor
House (D)
Senate (R)

STAFF & GUESTS ARE LISTED ON THE LAST PAGE

CONTINUATION OF AM SESSION

Chair Bill Frare called the Capital Projects Advisory Review Board (CPARB) afternoon session to order at 1:32 p.m.

A meeting quorum was attained.

JOC EVALUATION COMMITTEE – *Appoint Members - Action*

Alan Nygaard reported at the last Board meeting, members formed the JOC Evaluation Committee and appointed Amy Engle with the University of Washington as the Chair. Ms. Engle has established a slate of members to appoint to the committee. They include: Elsa Tibetts, City of Seattle; Brent LeVander, Centennial; Scott Aker, Lease Crutcher Lewis; Ed Simpson, Western Washington University; and Jim Phillips, Forma.

Bill Frare moved, seconded by Walter Schacht, to appoint the slate of members as proposed. Motion carried unanimously.

Robert Maruska said he would identify a potential member representing ports.

Chair Frare nominated Bob Bourg to serve on the committee. Brent LeVander seconded the nomination.

By acclamation, members appointed Bob Bourg to serve on the committee.

Mr. Nygaard advised that the goal of the committee is to review data from previous data collection efforts and identify some best practices for potential legislative updates to the JOC statute.

Andrew Thompson offered a nomination of Ryan Robinson, who is an owner of a small business. Mr. Robinson has been very supportive of the JOC environment and is a practitioner of procurement. He offered to contact Mr. Robinson to ascertain his interest in serving.

Chair Frare reviewed the list of appointed members and recommended adding new members after individuals have had an opportunity to learn about the appointment opportunity.

Mr. Nygaard suggested more representation is warranted by small business representatives.

Santosh Kuruvilla suggested contacting the City of Seattle for potential membership. He offered names of potential candidates. Rebecca Keith offered to contact other City departments. Elsa Tibetts administers master contracts.

SEPTEMBER 2017 MEETING AGENDA – Action

Chair Frare reviewed the agenda for the September meeting. Suggested items included:

- Discussion on *Honorariums (as part of work by the Design-Build Best Practices Committee)*
- Design-Build Best Practices Committee Guidelines Presentation and Discussion
- Update on the High Performance Design-Bid-Build Committee
- Update on Data Collection Systems
- Update on Legislation of Interest
- Report from the Governor’s Diversity Subcabinet
- Standing PRC Report
- PRC Recruitment for Hospitals position

Chair Frare recommended deferring the review of CPARB’s bylaws to a future meeting.

APPROVAL OF PM SESSION Agenda – Action

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

PUBLIC COMMENTS

Public comments were encouraged throughout the meeting.

PRC RECRUITMENT INTERVIEWS – Action

Construction Manager – 1 Position

Chair Frare reported five candidates applied for one Construction Manager position. He invited the candidates to speak to their respective application.

Earl Eastman, Alliance MCS, participated in the interview by teleconference. Mr. Eastman thanked the Board for the opportunity to submit an application for membership on the PRC. He recently established Alliance MCS providing professional services as a Construction Manager. He serves as a Construction Manager for several school districts. His experience with alternative public works was derived from his position as a general contractor and project manager for a general contractor in Spokane and the Tri-Cities areas. Professionally, his work on GC/CM projects were the most rewarding and successful projects. He supports GC/CM and other alternative public works as a delivery vehicle for the right project. He is familiar with the CPARB and the PRC and is aware of many different projects seeking and receiving approval. He has been involved in several GC/CM projects. He does not believe the Columbia Valley is represented on the PRC. Several public owners have interest in pursuing GC/CM projects or have completed DB projects in the region. He believes he would be a good representative voice for the region.

Mr. Thompson asked whether Mr. Eastman’s time spent managing his company would hinder his attendance to PRC meetings. The PRC often faces some meeting challenges because of the need to attain a meeting quorum. Mr. Eastman replied that he consulted with a peer who is a member of the PRC about the time commitment and obligation. He is able to maintain good control of his schedule and understands the commitment and would not be pursuing membership if he believed he would be unable to fulfill the obligation.

Mr. Maruska asked Mr. Eastman about any experience with DB in addition to GC/CM experience. Mr. Eastman said he has no DB experience. He has some private DB project experience and is familiar with some of the requirements for a project to receive approval for DB.

Howard Hillinger, Construction Manager, Parametrix, said he is a current member of the PRC and is seeking appointment to a second term. Mr. Hillinger reported he has over 30 years of experience in the industry and has been working on alternative project delivery projects primarily as an Owner Representative for the last 20 years. His work involved both GC/CM and DB. He is currently working on DB projects for Sound Transit, as well as eight to nine

GC/CM projects. The owners range from small agencies to large public agencies with some owners with no experience to owners with alternative delivery experience. He has an understanding of the range of agencies who apply for alternative project delivery. He has also participated in continuing education and certification and is a certified Construction Manager (CM) by the Construction Management Association of America (CMAA) and is a certified Design-Build Professional and has completed GC/CM training.

Mr. Hillinger said he has been active in the growth of the CM profession and is also a member of the Board of the Northwest Region for Construction Management Association of America. He has been very active in professional development and training in alternative project delivery for the last three years, and served as the Co-Chair of the annual seminar for owners and practitioners to discuss best practices for GC/CM and DB. The seminars provide an important feedback loop, as PRC currently has no method of offering continuing education for owners desiring to pursue DB or GC/CM. There are few resources available for owners to receive information and training. He provides that bridge between the PRC and the community. He has also been actively involved with other efforts. He understands the role of the PRC in terms of implementing the intent of the legislation. He also served on the Heavy Civil GC/CM Task Force and is involved in the P3 Committee. He understands the pressures and the obligations of the CPARB.

Mr. Hillinger said he understands the importance of the PRC and has great respect for the process. It is not a rubber stamp, but there is a real need to open the process. During his role on the PRC, he often works to provide both accountability with the applicants and making it more understandable to those that are seeking to apply by providing materials and seminars to help educate owners of all agencies who want to deliver alternative public works projects.

Chair Frare asked Mr. Hillinger about his attendance record. Mr. Hillinger replied that he has only missed one PRC meeting because of a vacation.

Joaquin Hernandez arrived at the meeting.

Jeff Jurgensen, OAC Services, Inc., said he works with Dan Chandler, who served on the PRC for many years. Rusty Pritchard (*current PRC member*) currently works for him. Mr. Jurgensen said he has 28 years of construction experience with the last 20 years spent on general contracting or construction management. His experience with alternative delivery dictates that for the right projects it is the right application, but it is not appropriate for every project. He has worked on over 18 GC/CM projects and is currently working on six GC/CM with Central Valley School District. Four of the GC/CM projects were the original pilot projects with WSU in the early 2000s. He has completed six DB projects, one of which was Progressive DB. Another DB project completed in early 2000s was the only full K-12 facility built using the DB delivery method. He is currently working with Rusty Pritchard on two Heavy-Civil GC/CM projects.

Mr. Jurgensen said he is certified through CMAA as a Construction Management Professional, DBIA, and is a Certified Lifetime Specialist through ASPE. As a resident of Spokane, it is important the PRC include representation from the east side of the state. He would have no problems making the trips to attend the meetings. He established OAC Services with Dan Chandler in Spokane in 2006. He was also a founding member of the local chapter of Project Management Institute and served on the Inland Northwest Design-Build Chapter.

Stacey Shewell, Pine Street Group LLC, was not present.

Sam Obunike, O'Bunco Engineering International, Inc., participated by teleconference. Mr. Obunike said he had a conflict in his schedule and was unable to attend the meeting. He referred to his application letter that speaks to his experience with various public agencies since 1997. Some of the DB experience was with the Washington State Department of Transportation (WSDOT) on the SR 520 Pontoon Construction project and the SR 405 from I-5 to SR 167 project. He was also involved on DB projects at Fort Lewis. He also worked on a GC/CM project with the City of Seattle for the SPU-North Transfer Station project. He participated both in design, constructability review, and construction management for most of the major projects in the Puget Sound region.

Chair Frare asked whether Mr. Obunike was the owner of the company. Mr. Obunike affirmed he is the owner of the company, which was established in 1997.

Walter Schacht asked how many of the projects listed in the letter included construction management services as the letter speaks to experience in civil and environmental engineering, surveying, and construction management. He asked how many of the eight listed projects involved construction management services. Mr. Obunike cited the projects involving construction management services to include many Sound Transit projects.

Mr. Maruska noted that Mr. Obunike applied for either the Construction Manager or the Design Industry Engineer position. He asked whether the projects listed in the letter that were not identified as construction management service were related to design. Mr. Obunike said the SR 405 from I-5 to SR 167 project involved design services. He cited several other projects that included design services, as well as construction management services.

Chair Frare invited nominations from the Board for the Construction Manager position.

Discussion ensued on the number of votes to appoint. Ms. Deakins noted the bylaws speak to a 10 member affirmative vote for appointment of PRC positions. Mr. Schacht suggested the Board should conduct a simple majority votes to narrow the applicant field followed by a final vote. Members concurred with the suggestion.

Steve Crawford and Mr. Schacht nominated Howard Hillinger.

Irene Reyes nominated Sam Obunike.

Mr. Thompson nominated Earl Eastman.

Members spoke to their respective nominations.

Mr. Thompson said because it is important to have geographic diversity on the PRC, he nominated Mr. Eastman.

Mr. Crawford said although he also recognizes geographic diversity as an important factor, the Board is replacing a number of PRC positions and continuity is important.

Mr. Schacht said Mr. Hillinger's ability to reach out to the community and his involvement in CMAA gives him the ability to bring a board range of construction management interests to the table.

Ms. Reyes said she has known Mr. Obunike since 1994 when he was working for another agency prior to opening his company. He has an extensive background with state and federal projects. He is a civil engineer, a minority, and a good man.

Chair Frare called for the vote.

Three members voted for Earl Eastman. Seven members voted for Howard Hillinger. Two members voted for Sam Obunike.

By acclamation, members appointed Howard Hillinger to the PRC filling the Construction Manager position.

Design Industry-Engineer – 2 Positions

Chair Frare reported five candidates applied for two Design Industry/Engineer positions. He invited the candidates to speak to their respective applications.

Ken Leland, AHBL, said he is a practicing structural engineer with nearly 20 years of experience in the private industry. He works for a consulting firm, AHBL, headquartered in Tacoma with offices in Seattle, Tri-Cities, and Spokane. He works out of the Tacoma office and is a resident from the Lacey-Olympia area. He brings unique qualifications with experience working on Design-Build projects, GC/CM, Design-Bid-Build, as well as alternative negotiated contracts. He has experience working on both public and private projects, as well as state and federal DB projects. His goal is to bring an objective viewpoint to the committee and offer his experience and expertise.

Mr. Maruska asked Mr. Leland to identify the GC/CM projects he has been involved with. Mr. Leland said he was involved in several state GC/CM projects at community colleges. One included the South Puget Sound Community College Science Building, as well as several projects at the University of Puget Sound. All the work was in a design capacity.

Ms. Baker read a letter into the record from **Don Oates**:

Members of the Capital Advisory Review Board.

I wanted to write a note of apology for my absence and inability to call in to this meeting. I acknowledge the absence could affect the selection, but I wanted to assure you that participating on this committee is of great interest to me and I am hopeful that my combined project interest, focus on infrastructure, and transportation projects, as well as my DBIA accreditation would provide a unique perspective and valuable insight in support of the committee's work. One of the reasons I am most interested in supporting the committee is that alternative project delivery has been a focus of my career from the early 2000s. This interest continues to this day with my particular interest in the growing use of Progressive DB including KPFF's successful participation in two recent Progressive DB projects – the University of Washington West Campus Utility Plant and the Port of Seattle's International Arrival Facility. Again, I apologize for my absence today and thank you for your consideration.

At this point in the meeting Sam Obunike no longer participated by telephone.

Ms. Keith commented that it was possible Mr. Obunike did not realize that there would be a second vote.

Talia Baker advised that **Todd Sawin** with AHBL and **David Talcott** with Exeltech Consulting contacted her earlier and advised of their unavailability to attend the meeting.

Mr. Kuruvilla reported that since Mr. Talcott is a coworker, he would recuse himself from the selection of the Design/Industry/Engineer positions. Additionally, Mr. Talcott had a prior engagement concerning a high speed rail project. Mr. Talcott extends his apology. Mr. Talcott also applied at the last meeting for the position of Minority/Women-Owned Business and submitted his application for this position. He has known Mr. Talcott for 35 years. Mr. Talcott brings experience both on the horizontal side and the vertical side. On the vertical side, he has been involved with several DB projects for the U.S. Navy in San Diego. On the horizontal side, Mr. Talcott was involved in Sound Transit's first DB project on the SeaTac Guide Way project as the project manager. Mr. Talcott was involved in Sound Transit's first GC/CM project. Mr. Talcott has a passion for design and is a graduate of University of Washington and supports small businesses. He encouraged the Board to consider his candidacy.

Chair Frare commented that as the Engineering Representative on the Board, Mr. Kuruvilla's recommendation bears some weight. He asked whether he would recommend Mr. Talcott for appointment to the position. Mr. Kuruvilla remarked on the importance of maintaining balance with respect to the appointment and although he works with Mr. Talcott, he must also be objective while also promoting Mr. Talcott mostly because of the preponderance of experience Mr. Talcott has. Chair Frare asked whether he would recommend any of the other candidates. Mr. Kuruvilla referred to the impressive resume of Don Oates. The point concerning continuity while important, must be balanced with new membership and new ideas. Both Mr. Oates and Mr. Talcott offer that.

Mr. Maruska said he has worked with Mr. Oates on a number of projects as mentioned in his letter. He is working with him currently on a Progressive DB project. He is well qualified to serve on the PRC.

Mr. Schacht commented that although he does not know any of the candidates personally, all the candidates are impressive according to the resumes. Mr. Leland's letter implicated experience across the board with GC/CM, DB, and Design-Bid-Build. In his letter he shared how he helped an owner select Design-Bid-Build rather the owner's preference of GC/CM. It is important for everyone to understand that any project delivery method is best when it fits the specific circumstances of the project. He was appreciative of Mr. Leland's willingness to point that out, which would be of value to the PRC.

Chair Frare invited nominations for the two vacant positions of Design/Industry/Engineer.

Mr. Maruska nominated David Talcott.

Mr. Nygaard nominated Don Oates.

Ms. Reyes nominated Sam Obunike.

Four members voted for Don Oates. Six members voted for Sam Obunike. One member voted for David Talcott. Mr. Kuruvilla was recused from voting.

By acclamation, members appointed Sam Obunike to the PRC filling the first vacant Design Industry/Engineer position.

Chair Frare opened nominations for the second vacant position of Design Industry/Engineer.

Mr. Nygaard nominated Don Oates.

Mr. Thompson nominated David Talcott.

Five members voted for Don Oates. Six members voted for David Talcott. Mr. Kuruvilla was recused from voting.

By acclamation, members appointed David Talcott for the second vacant position of Design/Industry/Engineer.

Owner-Higher Education – 2 Positions

Chair Frare reported two candidates applied for two Higher Education positions. He invited the candidates to speak to their respective applications.

David Ernevad, Seattle Central College, participating by teleconference, thanked the Board for the opportunity as it is an honor to be considered amongst the pool of candidates. He has been in the construction management industry for approximately 19 years for private and public projects. He obtained his professional certification from PMI and completed the Construction Management certification program at the University of Washington and was certified by the Construction Specification Institute. He went on to obtain a Masters Degree at the Royal Institute of Technology in Stockholm in project management and operational development. His experience with the GC/CM and DB delivery methods is thin at best as he has been on the sidelines working with Chuck Davis on the Pacific Tower project, which is how he was exposed to the alternative delivery method. Even then, it was at a limited capacity. His experience is very strong in the Design-Bid-Build arena, JOC contracting, and ESCO contracting. He believes in the alternative methodologies in 39.10 and the potential to continue to grow as a tool in the arsenal that he would like to exercise and take part in. As such, he is very interested in building his knowledge around GC/CM and even promoting the process. He is an active member of the State Board of Community and Technical Colleges and the Operations and Facility Council, which possibly provides for a link to the PRC. There is a value in the perspective from someone who is essentially coming into the GC/CM world with perhaps fresh objectives and viewpoints. Mr. Ernevad said he was encouraged by Chuck Davis to apply.

Jon Lebo, University of Washington, participating by teleconference, thanked the Board for the opportunity to present his qualifications for the position. For nearly three years, he has served on the PRC. He has approximately 29 years of design and construction managing experience at the University of Washington for all types of projects. He has been involved in alternative public works projects for nearly the last two decades. He has worked on large alternative public works projects to include student housing, Life Sciences building, as well as other facilities on campus. Most of the alternative public works have been primarily the GC/CM and the ECCM subcontracting process. He has recently been involved in helping the develop the University's new DB contract. Previously, he served as a supporting role on DB projects. The PRC plays an important role in promoting and approving the use of alternative public works for public projects in Washington. He sees that in the quality of the team presentations to the committee. He is also involved in the design construction industry and believes he would contribute an important role on the PRC. His background and

experience at the University of Washington makes him exceptionally well-qualified to represent higher education and he would appreciate the opportunity to continue his role on the PRC.

Mr. Nygaard said the University has a great team and Mr. Lebo could be considered as the “grandfather” of GC/CM activities because he has been completing GC/CM projects for most of his career. Although the other applicant has very little experience and is a newcomer, he would provide good representation for smaller community colleges. It is a good opportunity to expand community college experience, as well as for Mr. Lebo to share his expertise and experience with others. The Board is fortunate to have two candidates who are willing to participate and provide good representation for higher education.

Mr. Schacht spoke to his firm’s experience with Mr. Lebo, which spans more than 25 years. The breadth of his experience and the commitment to the PRC speaks to Mr. Lebo as being an incredibly capable person. Reappointment of Mr. Lebo would be beneficial. Although his firm has never worked with Mr. Ernevad, he knows of Mr. Ernevad and believes he is extremely capable. Chuck Davis was a previous CPARB member representing hospitals and then became an employee of Seattle Central College. Mr. Ernevad would have some resources to help him, as well as his experience to be a capable member of the PRC.

Scott Middleton (Alternate) said he also had an opportunity to work with Mr. Lebo on the ECCM/MCCM Best Practices Committee. Mr. Lebo has a thorough understanding of alternative contracting. Mr. Middleton added that as a representative of subcontractors his constituents do not always see eye to eye on everything, but that Mr. Lebo has always been willing to recognize the importance of the common good.

Mr. Thompson echoed similar comments. Mr. Lebo was a participant on the ECCM/MCCM Best Practices Committee. Although he has never worked with Mr. Lebo, he is definitely a hands-on person in that environment. Mr. Thompson expressed appreciation to Mr. Ernevad for his honest description of his expertise and his understanding of the distinction between Design-Bid-Build and serving as a person who would be reviewing GC/CM and Design-Build.

Chair Frare recommended a vote on the slate of candidates for the two positions.

By acclamation, members appointed David Ernevad and Jon Lebo to serve as Higher Education representatives on the PRC.

Specialty Contractor – 1 Position

Chair Frare reported one applicant applied for the one vacant position of Specialty Contractor.

Chair Frare invited Bryan Eppler to speak to his application.

Bryan Eppler, University Mechanical Contractors Inc., thanked the Board for the opportunity to present his experience. He has been with University Mechanical Contractors for 20 years. The firm is a quality DB contractor. Over that timeframe he had the opportunity to work on everything from GC/CM to ECCM, which is a new DB process. He also worked on DB through the lease buy-back program and served as a project manager for a DB project from beginning to the end of the project. During the last three years, he has been working with the Department of Enterprise Services on energy services as part of the DB process. He believes he has a good breadth of delivery of projects and also has worked with MCA and the Association of General Contractors and has been a member of the AGC’s Board of Education for 10 years. He has been a member of MCA for four years as a member of the Board of Education. He had an opportunity to review lessons learned both as a practitioner, in the classroom, and in the work environment. He has had the opportunity to study the laws and rules that he could apply in a meaningful way.

Mr. Middleton said Mr. Eppler is a member of MCA of Western Washington. Mr. Middleton said he serves as the general counsel for the association. Mr. Eppler would be an outstanding addition to PRC. He has worked with Mr. Eppler as a member of MCA’s Board of Education since 2013. Mr. Eppler participated in policy decisions at MCA, recognized the importance of common good for all stakeholders, was a strong leader, a problem-solver, detail-oriented, and has a calm demeanor. Most important, he is a pleasure to work with. He recommended Mr. Eppler for the position.

Chair Frare invited nominations.

Mr. Thompson nominated Bryan Eppler.

By acclamation, members appointed Bryan Eppler to serve in the position of Specialty Contractor on the PRC.

Owner – Counties – 1 Position

Chair Frare reported one candidate applied for the vacant position of Owner-Counties.

Chair Frare invited David Brossard to speak to his application.

David Brossard, King County, participated by teleconference and expressed appreciation to present his application to the CPARB for the PRC. His supervisor, Jim Burt, recommended he apply for the vacant position. He believes it would be a good opportunity to make a contribution to the industry. He has been an advocate of alternative public works for many years and has completed some alternative public works projects in King County that improved public delivery. Currently, he serves as the Supervisor in the Capital Planning Section. He has experience in the private sector with GC/CM and DB, is a member of the DBIA and is a practitioner, and is a Project Management Professional member of PMI. He is also a certified Quantity Surveyor. His project experience includes some large GC/CM high school projects in the state and DB projects at Ft. Lewis, Nellis Air Force Base, and other military installations around the country. He also has experience in the educational field and completed many elementary, secondary, and high school projects. While at the county, he has assisted with JOC contracting at the county taking many hours of staff time to procure work. JOC contracting has been well received by the county. He also served on project management committees at the county developing project management standards manuals and procedures for various agencies within the county. His experience also includes 6,320 delivered projects that are delivered as a form of a lease-back using IRS rules, which is a form of DB. He has some fairly broad experience and it would be his pleasure to serve on the committee to help promote alternative public works in the state.

Chair Frare invited nominations.

Mr. LeVander nominated David Brossard.

By acclamation, members appointed David Brossard to the vacant position of Owner-Counties on the RC.

Owner – State – 1 Position

Chair Frare reported one applicant applied for the vacant position of Owner-State.

Chair Frare invited Yelena Semenova to speak to her application.

Yelena Semenova reported she is an architect by degree and has a Masters in Architecture. She has been in private practice for 18 years and now works for DES. She serves as a Project Manager for DB, GC/CM, and Design-Bid-Build projects. Design-Build is fairly new to DES. She has completed two projects and is working on a third project. She is heavily involved in rewriting contracts for the DB process. She is also a member of CPARB's DB Best Practices Committee to help improve the process for the state. She would like to be a member of the PRC because it provides an opportunity for exposure to many different public agencies, as well as private contractors and designers to hear their opinion when they review the projects. The opportunity to revisit some of the projects that were not approved is also important. She shares the information, best practices, and things to avoid with other state project managers. On a personal note, service on the PRC provides an opportunity to give back especially when some projects are not approved. Often, applicants call and ask how the application can be improved. That process provides her with an opportunity to share the experiences and to help them to reapply with an improved application.

Chair Frare said Ms. Semenova works in his department and he can always count on her to maintain high standards when managing projects. He recommended her appointment to the PRC.

Ms. Reyes asked Ms. Semenova what challenges she has had to overcome being a woman in a male-dominated industry and what challenges continue to exist. Ms. Semenova replied that she has not encountered many challenges as it is the knowledge that she has and the help of her coworkers and others that prevented her from being in a position where she had to face something distasteful. In this industry, especially in the last 10 years, changes have occurred. Women are appreciated just as much as male coworkers at this point.

Chair Frare and Mr. Thompson nominated Ms. Semenova to serve on the PRC as the Owner-State representative.

By acclamation, members appointed Yelena Semenova to serve as the Owner-State representative on the PRC.

Mr. Kuruvilla inquired about the current balance of private and public members on the PRC. Ms. Deakins said the PRC's bylaws include provisions to ensure a mix of public and private representatives. The majority of members represent areas between Seattle and Olympia.

ADJOURNMENT

With there being no further business, Chair Frare adjourned the meeting at 3:05 p.m.

STAFF & GUESTS

John P. Ahlers, Ahlers Cressman	Don Laford, CMAA
Bob Armstead, NAMC	Job Lebo, University of Washington (Telecon)
Talia Baker, DES	Ken Leland, AHBL
Doug Benjamin, Walsh Group	James Lynch, Ahlers & Cressman
Rodger Benson, Mortenson Construction	Mark Lyon, Office of Attorney General
David Brossard, King County (Telecon)	Colm Nelson, Foster Pepper
Nancy Deakins, DES	Sam Obunike, O'Bunco Engineering Int, Inc. (Telecon)
Earl Eastman, Alliance MCS (Telecon)	Elana Oguiza, WPPA
Alyssa Englebrecht, Smith & Lowrey	John Palewicz University of Washington
Bryan Epler, University Mechanical Contractors, Inc.	Greg Radom, Mortenson Construction
David Ernevad, Seattle Central College (Telecon)	Yelena Semenova, Department of Enterprise Services
Valerie Gow, Puget Sound Meeting Services	Larry Stevens, NCAWW/NECA
Howard Hillinger, Parametrix	Josh Swenson, IUOE L#302
Warren Johnson, Walsh Group	Aaron Toppston, Walsh Group
Jeff Jurgensen, OAC Services, Inc.	Jerry Vanderwood, AGC
Aleanna Kondelis, City of Seattle	Olivia Yang, Washington State University