

Capital Projects Advisory Review Board

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Article I. CAPITAL PROJECTS ADVISORY REVIEW BOARD

Section 1: Description

The statutory membership of the Capital Projects Advisory Review Board (“Board” or “CPARB”) is broadly based, and reflects the interests of design and construction industries, labor, minority and women businesses, higher education, department of enterprise services, sureties, public hospital districts, school districts, cities, counties, ports, and the Legislature. Members sit as individuals; they will, however, be expected to seek out the opinions of their representative groups.

Section 2: Purpose

The 2005 Legislature created the Board under ESHB 1830 (~~RCW 39.10.800 and 39.10.810~~). The 2007 Legislature (Chapter 494, Laws of 2007, 2SHB 1506) recodified these statutes and revised its duties to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods. The 2013 Legislature reauthorized the Board (Chapter 222, Laws of 2013, and SHB 1466) and extended alternative public works contracting procedures through July 1, 2021.

Specifically, RCW 39.10.230 grants the Board the following powers and duties:

- (1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;
- (2) Evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts;
- (3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;
- (4) Appoint members of committees; and
- (5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

Additionally, RCW 39.10.240 directs that the Board shall establish a project review committee (“PRC”) to review and approve public works projects using the Design-Build and General Contractor/Construction Manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

Article II COMPOSITION OF THE BOARD

Section 1: Membership

[RCW 39.10.220](#) directs that members of the Board shall be appointed as representatives from specific stakeholder groups as illustrated in this table:

| | | a) <u>Representatives appointed by the Governor</u> | | | b) <u>Representatives selected by other bodies</u> |
|---|---------------------|--|----------------------------|---------------------|---|
| <u># of Members</u> | <u>Votes</u> | <u>Representing</u> | <u># of Members</u> | <u>Votes</u> | <u>Representing</u> |
| 2 | Yes | Construction General Contracting | | | |
| 1 | Yes | Architectural Profession | 1 | Yes | Counties |
| 1 | Yes | Engineering Profession | 1 | Yes | Ports |
| 2 | Yes | Construction Specialty Contracting | 1 | Yes | Public Hospital Districts |
| 2 | Yes | Construction Trades Labor | 1 | Yes | School Districts |
| 1 | Yes | OMWBE | 1 | No | House of Representatives (D) |
| 1 | Yes | Higher Education | 1 | No | House of Representatives (R) |
| 1 | Yes | General Administration | 1 | No | Senate (D) |
| 2 | Yes | Private Industry | 1 | No | Senate (R) |
| 1 | Yes | Insurance/Surety Industry | | | |
| 1 | Yes | Cities | | | |
| 23 Total Board Members, 19 are voting members, 10 are required for a quorum The 15 members in column a) are appointed by the Governor; those 8 members in column b) are appointed by other bodies. | | | | | |

All appointed members must be knowledgeable about public works contracting procedures. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term.

Members are appointed in accordance with RCW 39.10.220 (with any vacancies filled in the same manner as the original selection).

Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under [RCW 34.05](#). The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

Members appointed by the governor shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

The department of enterprise services ("DES") shall provide staff support as may be required for the proper discharge of the function of the board.

Legislative members of the board shall be reimbursed for travel expenses in accordance with [RCW 44.04.120](#). Non-legislative members of the board, project review committee members, and committee chairs shall be reimbursed for travel expenses as provided in [RCW 43.03.050](#) and [43.03.060](#).

All board members shall be provided with a copy of the current “Boards and Commissions Membership Handbook” published by the Office of the Governor (or provided with substantially similar training or educational materials).

Section 2: OFFICERS

Chair

In accordance with RCW 39.10.220(4), the Board shall select a Chair by majority vote of the voting members. The election of the Chair shall take place at the May meeting in even years, starting in 2016. The Chair can be removed by the affirmative vote of 2/3 of voting members. The Chair will establish the agenda and conduct the meetings, and will be the primary spokesperson for the Board.

Vice Chair

The Board shall also select a Vice-Chair by majority vote of the voting members immediately following the election of the Chair. If the Board elects a Chair from the public sector, then only CPARB board members from the private sector shall be eligible for the Vice-Chair position, and vice-versa. The Vice-Chair shall assist the Chair as appropriate, and perform all duties normally performed by the Chair in his or her absence. The Vice-Chair can be removed by the affirmative vote of 2/3 of voting members.

Vacancy

If the Chair position becomes vacant then the Vice-Chair shall assume the position of Chair and serve the remainder of the term and the Board shall elect a new Vice-Chair to serve the remainder of the term. If the Vice-Chair position becomes vacant then the Board shall elect a new Vice-Chair to serve the remainder of the term.

Article III MEETINGS

Section 1: Meeting Schedules

The board shall meet as often as necessary. Board meetings shall be scheduled and with notices published in accordance with the Open Public Meetings Act (OPMA), [RCW 42.30](#).

Section 2: Meeting Attendance

Board members are expected to consistently attend board meetings. When a member is unable to attend a Board meeting, the member should advise the Chair in advance. Board members may attend a meeting via teleconferencing or videoconferencing when those services are available provided that all board members can hear each other simultaneously and fully participate in discussion and voting. The chair of the board may ask the governor, or the appropriate appointing body, to remove any member who misses more than two meetings in any calendar year without cause and request the appointment of a new representative if appropriate.

Section 3: Stakeholder representation in the absence of Board Member

Because CPARB is intended to gather input and information representative of the interests of all stakeholder groups, if a board member is unable to attend a meeting he or she is encouraged to send an informed representative of their stakeholder group to participate in board discussions. Provided that advance notice is given by the board

member to the chair and staff, such informed representatives may be identified and introduced for the record, be seated with the board, and called upon for input on discussion items speaking on behalf of the absent board member. Informed representatives may not vote or participate in executive sessions and do not count for the purposes of a quorum.

Section 4: Quorum

A minimum of ten of the 19 voting members of the Board must be present in order for the Board to call the meeting to order and take “action.” During a meeting when a quorum is no longer present, the Board must adjourn the meeting or recess the meeting until a quorum is present. No further “action” may be taken after the quorum is lost. “Action” is defined in the Open Public Meetings Act (OPMA), [RCW 42.30.020](#) as “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.” “Final action” is also defined in the OPMA as “a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.”

If 10 or more voting members gather at any time other than a scheduled meeting, care should be taken to avoid any discussion or deliberation of Board business in order to ensure compliance with the Open Public Meetings Act.

Section 5: Meeting Agendas

The order of business for Board meetings is generally the following unless a significant change is recommended by the chair and approved by the Board:

1. Self-Introductions
2. Approval of Agenda
3. Approval of minutes of the previous meeting
4. Public comments.
5. Committee Reports
6. Special matters or orders
7. Unfinished business and general matters
8. New business
9. Set agenda for next meeting
10. Adjourn

At the close of each meeting, the Board will identify proposed discussion and action items for the next meeting’s agenda (9. above). Any Board member may ask for an item to be placed on the agenda by making a request to the Chair. The Chair will finalize the agenda and instruct DES staff to distribute and post the agenda in compliance with the notice requirements of the OPMA.

At such time as the meeting agenda is approved at the beginning of each regular meeting (2. above), Board members may ask for the addition of discussion items to the agenda by consent of the Board.

No agenda items may be added to special meetings.

Section 6: Public Comment during Meetings

The board shall encourage participation from persons and entities not represented on the board. The Board's meeting agenda will provide for a public comment period. The Chair will set and monitor time limits during the public comment period in order to equitably apportion time and to accommodate the number of persons present seeking to make comments. The Board may also take public comments during the meeting at the discretion of the Chair.

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

[RCW 42.30.040](#)

Section 7: Meeting Minutes

Minutes will be recorded and made available to the Board for review prior to the next meeting. After approval, minutes will be made publicly available and promptly published and posted on the DES/CPARB website.

Section 8: Open and Public Meetings Act

The Board is subject to the Open and Public Meetings Act, RCW 42.30. Meetings will be publicly advertised in a timely manner consistent with the OPMA, held in ADA-accessible locations, and accommodate auxiliary aids for persons with disabilities when requested in advance.

Article IV PROCEDURE

Section 1: Action and Decision-Making

Consensus is the preferred method of decision-making. If the Chair determines that a consensus cannot be reached, the Chair may call for a vote of the Board. In order to pass, a motion must secure ten affirmative votes, regardless of how many of the 19 voting members are present. Only voting members present at the meeting, in person or by teleconference, may vote. Voting members are indicated in the membership list above. The chair is a member and may vote. Voting by secret ballot is prohibited.

Section 2: Parliamentary Procedure

The Chair shall be guided by *Robert's Rules of Order* in conducting board meetings. The Rules of Order may be suspended by a majority of the voting members with the purpose of the suspension identified in the motion.

Section 3: Staff and Technical Assistance Requests

Board members shall make any requests for DES staff and technical assistance through the Chair.

Section 4: Media Relations

Board members shall refer to the Governor's Boards & Commissions Membership Handbook for guidelines in regard to media relations and requests. The Chair shall serve as the primary spokesperson for the Board.

Article V AMENDMENT OF BYLAWS

Section 1: Amendment Procedures

The Bylaws may be amended by the affirmative vote of 12 or more of the 19 eligible voting members, at any regularly scheduled meeting or special meeting called for that purpose, provided that notice of the proposed change was given at the previous regularly scheduled meeting, and that the complete text of the proposed change was provided to all board members and published on the DES CPARB website at least 10 days in advance. The Board may appoint a Bylaws committee to make recommendations for consideration by the full Board.

Article VI CONFLICT OF INTEREST

Section 1: Conflict of Interest

When called upon to hear appeals arising out of project approval or denial decisions made by the Project Review Committee, board members shall adhere to all applicable state ethics guidelines and rules, and the conflict of interest bylaws, rules, provisions, recusal procedures, and confidentiality policies adopted by the Project Review committee, as appropriate.

Article VII COMMITTEES

Section 1: The Project Review Committee

1. Membership: The Board shall, by majority vote, appoint a Project Review Committee (PRC) to:

- **a)** Certify, or renew certification for, public bodies to use design-build or general contractor/construction manager contracting procedures, or both;
- **b)** Review and approve the use of the design-build or GC/CM contracting procedures on a project by project basis for public bodies not certified under RCW 39.10.270;
- **c)** Review and approve not more than fifteen projects using the design-build contracting procedure by noncertified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. At least annually, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use: and
- d)** Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years.

The members of the PRC shall be knowledgeable in the use of the design-build and the GC/CM contracting procedures. Appointments must represent a balance among the industries and public owners on the Board.

2. Bylaws: The Project Review Committee shall establish and maintain its own procedures or by-laws for approval by the Board. The PRC committee procedures and by-laws shall incorporate a conflict of interest and recusal policy that complies with all federal and state requirements and that inspires the public trust. ~~Proposed changes to procedures or by-laws shall not take effect until approved by the Board.~~

3. Appealing Committee Determination: In order to carry out its duties and to facilitate the hearing of appeals from the PRC under RCW 39.10.290, CPARB adopts the following policy regarding the conduct of such appeals:
- a) **Filing of Appeals.** Any interested party may appeal a final determination of the Projects Review Committee, regarding use an alternative public works method, within seven days. Appeals must be filed in writing at the Board's address of record at: 1500 Jefferson Street SE, MS: 41476, Olympia, WA 98504-1476. Appeals must be received by 5:00 PM on the seventh day, unless the seventh day falls on a Saturday, Sunday or state holiday, in which case the next regular business day shall be treated as the seventh day.
 - b) **Notice of Appeal.** A copy of the written notice of appeal must be provided by the Appellant to the Project Review Committee and, as applicable, to the public body seeking certification to use an alternative public works method.
 - c) **Parties to an Appeal.** Parties to an appeal will be limited to interested parties who have filed a timely appeal, and, as applicable, the public body. The Board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument. Receipt of comment and argument by other persons will be at the discretion of the Board.
 - d) **Scheduling and Notice of Hearing.** Upon receipt of an appeal, the CPARB Chair, in coordination with staff, will schedule a special meeting of the Board to hear and consider the appeal. Parties to the appeal will receive at least ten (10) days written notice of the hearing.
 - e) **Prehearing orders.** To the extent necessary to facilitate the orderly hearing of the appeal, the CPARB Chair is delegated to establish briefing schedules and make procedural rulings and orders subject to confirmation by the Board.
 - f) **Review of Record before the PRC.** In conducting an appeal under RCW 39.10.290 the Board will limit its review to facts and arguments presented to the Project Review Committee. The Board shall consider the whole record or such portions of it as may be cited by the parties.
 - g) **Decision.** The Board shall resolve an appeal within forty-five days of receipt of the appeal and shall send a written determination of its decision to the party making the appeal and to the appropriate public body, as applicable. The Chair shall sign the written determination on behalf of the Board.
 - h) **Waiver of policy.** In order to prevent hardship, delay or for other good cause, the Board may waive any of these procedural rules to the extent that waiver does not conflict with the provision of RCW 39.10.290.

Section 2: Ad Hoc Committees

The Board may establish other committees as appropriate and may invite nonmembers of the Board to serve as voting committee members.

Section 3: Committee Guidelines

The committees of the Capital Projects Advisory Review Board (Board) are formed by the Board to support the mission of the Board as defined Article I Section 2 of these by-laws. All committees are subject to the Open and Public Meetings Act, RCW 42.30. A list of current committees should be posted on the CPARB website page of DES.

Section 4: Committee Membership

The Board will approve the voting membership of committees. Committee member nomination and leadership selection procedures are intended to be flexible, to suit the needs of individual committees. (Except for the PRC, where RCW 39.10.240(2)(b) requires that the committee must elect its own chair and vice chair).

Section 5: Committee Meetings

Committee meetings shall be scheduled by the committee Chair, or upon request of the Chair of the Board. Any "action" taken by the Committee (as defined in the OPMA, RCW 42.30.020(3)) must be consistent with the Scope for the Committee.

Section 6: Committee Meeting Attendance

Committee members are expected to consistently attend committee meetings. When a voting member is unable to attend a committee meeting, the member should advise the committee Chair in advance. All committees, other than the PRC, may adopt rules that permit committee members to send an informed substitute to sit in for discussion and/or to act on behalf of the committee member's stakeholders with prior notice to the committee chair.

Section 7: Committee Meeting Quorum

To have a quorum of committee members, there must be more than fifty percent of the voting committee members present for the committee to conduct business and take action.

Section 8: Committee Meeting Minutes

PRC minutes will be recorded and made available to the committee members for review prior to the next PRC meeting. CPARB will provide resources for note taking/minutes for the PRC meetings. Other committees shall maintain records, notes or minutes that meet OPMA and other state requirements. The committee chair shall request resources as needed for approval by CPARB. After approval, all committee minutes will be made publicly available and promptly published and posted on the DES/CPARB website.