Project Feedback Process Workgroup

Committee Members: *(14 members, 8 = Quorum)*

X Dave Johnson *Co-Chair,* General Contractors

X Jeff Gonzalez, *Co-Chair*, Owners State

X Kurt Boyd, Specialty Subcontractors

Marvin Doster, General Contractors

Lekha Fernandes, OMWBE

Bobby Forch, Jr., Disadvantaged Businesses

X Thomas Golden, Design Industry-Architects

X Art McCluskey, Owner General Public

X Karen Mooseker, School Districts

X Mike Pellitteri, Specialty Subcontractors

Irene Reyes, Private Industry

X Linneth Riley Hall, General Owner

X Robynne Thaxton, Private Industry

X Olivia Yang, Higher Ed

Guests:

Talia Baker, DES Staff

Scott Middleton, MCA

Colleen Newell, MFA

Co-Chair Jeff Gonzalez called the meeting to order at 11:03 a.m. A quorum was established.

1) **Review and approve agenda -** *Action*

   Co-Chair Gonzalez reviewed the agenda and asked the group for any edits before proceeding.

   Olivia Yang moved, seconded by Linneth Riley Hall, to approve the agenda. The motion was approved by a voice vote.

2) **Approve minutes from 10/19/2023** *– Action*

   Co-Chair Gonzalez asked the group for any edits to the meeting minutes from October 19, 2023.

   Olivia Yang moved, seconded by Kurt Boyd, to approve the meeting minutes. The motion was approved by a voice vote.

3) **Review of Example of Issues Reported**– *Discussion\Action*

   a) The purpose of this next discussion was centered around how issues are handled as they arise. This group was asked to send examples of issues they had seen or heard of, including instances that did not go well within the Design-Build of General Contractor/Construction Manager (GC/CM) processes. Co-Chair Johnson compiled all of the examples into a summary table, which may help the group better understand these issues and how to move forward with establishing a pre- and post-incident process.

   b) The summary table of sample project issues included the issue, delivery type, and then how the issue was categorized—whether it was a best practice issue or related to compliance with the Revised Code of Washington (RCW).

   c) The first issue that was submitted was related to the slow approval of change orders by school districts. This was a GC/CM delivery method and categorized as an RCW issue, as the RCW requires change orders to be issued within 30 days of agreement on price.

   d) Context was provided around the first issue regarding school districts. Every school board doing construction needs a policy about change orders. Schools have their own change order process that stipulates a threshold of a dollar amount. However, sometimes school boards are unable to act on or approve change orders due to infrequent meetings. One potential way to address this issue would be to brainstorm ideas and provide recommendations for how to address the slow approval.

   e) It was reiterated that the goal is not to solve issues, but rather identify and discuss the issues that are arising and think about how they are being handled. There are committees, such as the GC/CM Committee, that are establishing best practices guidelines, which will hopefully serve as an opportunity to address some of these issues. The purpose of this group is to determine how to handle bad actors and certain issues.

f) The focus now was to look at what issues are out there and then figure out how to address or handle them. There have been issues that people have been complaining about and it would be helpful to first gain context about what those are. Then, this group can decide on a process for collecting the information and determining what to do with it. This process may include referring issues to the Capital Project Advisory Review (CPARB) or other committees, or a potential change in the RCW.

g) Several of the issues that were included as examples were ones that could not be addressed because they are not violations of the RCW. Therefore, it was suggested that the focus should be on issues that are a violation of statute.

h) Before examining these issues, the group needs to first understand the limitations of the Project Review Committee (PRC) in addressing issues. The PRC needs to be cautious of making decisions to approve or not approve projects or certifications due to past issues, especially if they are not in violation of the statute.

i) There was some confusion amongst the committee regarding the intent of this portion of the meeting. It was explained that the purpose of compiling the list of examples of past reported issues was to help the committee understand the types of problems that exist. Knowing these will help inform categories of solutions to address the issues. Some of these solutions could include a change in the RCW, best practices guidelines, or creating a process for lower levels of intervention to address issues.

j) The committee continued to run through the compiled list of issues. Reviewing and understanding what issues have been reported to CPARB and the PRC will help this committee achieve their mission, which was to figure out what to do with issues as they arise. This committee should consider all factors that are involved in these issues, such as the project, contractor, subcontractor, delivery method, and so on.

4) **Post Incident Approach** – *Discussion*

a) It was noted that there are global systemic remedies, but also issues that occur and a consideration for what the aggrieved person should do. Outlining a series of steps to address the issue may be a potential solution. Connecting the dots between the issues we hear about and the current work going on within other committees regarding best practices is something that this committee has the opportunity to do.

b) It was noted that the remedy for someone violating the statute is a protest, just like for any other delivery method. CPARB and the PRC have no statutory authority to address that violation until the owner comes back to the PRC for certification or project approval. If the PRC denies approval on the basis of evidence that is old, not proven, or based on a complaint, then this may be an issue for agencies and cause a delay in projects. This delay is similar to what a bid protest would do, and if bid protest is enacted then there is a requirement to put up a bond for the cost of the delay of the project. This would entail an extra judicial remedy that does not exist in statute and could potentially create issues for CPARB and the PRC.

c) This committee is attempting to develop a protocol culture around contemporaneous problem-solving at the lowest level. Depending on the issue, the outcome for how it is resolved may differ. One idea suggested was to develop norms and behaviors to deal with issues that occur or lay out a path to remedy issues. Otherwise, this committee would just be repeating the work of other committees.

d) One example was given of an issue for which an established process is needed. One PRC member's company had a lawsuit with an applicant, and this information was brought up during the evaluation period. There needs to be a process for situations such as those, not only after they occur but also to establish a training so it does not happen again. Another idea to address issues was to set up a quarterly meeting to discuss issues that have been heard and figure out how they are being addressed.

e) When considering creating processes, it may be important to provide various options for paths forward, while giving context about what each of those steps may entail. For example, if someone files a protest it should be noted that may be very costly. Setting up processes for early intervention will help gain common ground amongst industry stakeholders and avoid unnecessary time and expenses in attempting to resolve the issues.

f) While recognizing there will always be bad actors, one option may be to document these issues and write recommendations to CPARB for the next RCW writing to tighten some of the loopholes.

g) It was pointed out that in the past there have been processes that have been utilized on several occasions to address issues. When somebody is doing something inappropriate, the next step was to talk to them. This was done on a frequent basis, in which the owner would be called and notified that they were in violation of the RCW. It was reiterated that this process would need to stay the way that it is and that the PRC does not have the budget to address these issues, some of which would require the hiring of a lawyer. There are several issues that the PRC is not geared to handle.

h) It is helpful background to understand past processes for handling and addressing issues. The goal could now be for this committee to formalize the process, which will help make the issues known and addressed. However, it was clarified that to take punitive action requires authority that the PRC does not have.

i) Committee members provided context for some of the examples they provided. They noted ongoing frustration for encountering issues that have not been resolved.

j) A question came up about PRC members recusing themselves for conflicts with agencies when they come before the PRC. If members recuse themselves then they are unable to talk to any of the agencies about the issues or conflicts. There should be some way or forum to discuss these issues.

k) It was again reiterated that the hope is that these issues can be addressed at the lowest possible level. There may be a way to figure out the process based on certain examples, and some may escalate to a different level, but if an issue can be resolved through a phone call, that would be preferred.

l) It was suggested to set up a matrix that provides guidelines for contractors and subcontractors to go through the feedback process. This may also introduce an opportunity to report back to CPARB as issues come up. Setting up clear documentation that helps contractors or subcontractors understand issues and deal with them will be helpful down the road.

m) Many contracts have dispute resolution provisions. There may be a lower-level dispute resolution that can provide some expectation-setting or guidance for how to address issues.

n) Part of the duties for being on CPARB and the PRC include a willingness to resolve issues and help mitigate issues. As part of the recently approved job descriptions for CPARB, it includes details about stakeholder representation and outreach. The Board Development Committee may need to address this and include guidance for their role when issues arise. This could also be done in the orientation process for board members.

o) While there are job descriptions for each of the board members, there is no requirement to comply with the descriptions. It is also important to ensure there are boundaries and established processes for board members so they have the tools and resources necessary to address issues.

p) A recap was provided of what was discussed, including ideas for further considerations:

   i) Involve CPARB constituents to help start a process if issues arise. This process would include understanding the issue and determining an escalation step to resolve it, which could be as simple as calling someone.

   ii) Develop a flow chart to establish a process. This could start from the lowest level of talking with someone and then escalating further.

      iii) Determine how to collect information and the process to start, and what to do with it once it is collected.

      iv) Figure out how to communicate this process and provide trainings on it. This goes back to the education and preventative step and understanding what the processes are.

q) In the interim, while the committee is defining issues and trying to understand them, it was recommended that this committee establish an interim plan to deal with the issues. One part of that plan could be to first communicate at the lowest level. There was agreement that many of the issues could be handled this way. However, the root of these issues may be not understanding the RCW and what it entails.

r) This interim plan may also include ways to ensure owner readiness, such as creating a set of values for owners or asking questions of owners when they come to the PRC. There may be challenges in asking subjective questions that are not related to the RCW.

5) Next Meeting Agenda – *Discussion*

- Thursday, December 21, 11:00am – 12:30pm
- Approve Agenda
- Post-incident approach
  - Reporting process
  - Next steps
  - Escalation process
- Next Meeting Agenda
- Adjournment

6) Action items

a) All members continue to think about and send Co-Chair Jeff Gonzalez and Co-Chair Johnson examples of issues related to projects and certifications.

Meeting Adjourned at 12:35 p.m.