

**CPARB Reauthorization Committee Meeting Notes
December 2, 2019 1 p.m. – 4 p.m.
Columbia Center, Suite 2050, Seattle, Washington**

In attendance:

Chair: Rebecca Keith (WA Cities)

Vice-Chair: Robynne Thaxton (Private Industry)

Members: Neil Hartman (WA Building Trades) - phone, Robin Heinrichs (School Districts) – phone, Santosh Kuruvilla (Engineers) – phone, Scott Middleton (Specialty Contractors), Mike Pellitteri (General Contractors), Brian Barson for Linneth Riley-Hall (Transit) – phone, Olivia Yang (Higher Ed)

Guests: Nancy Deakins (DES) – phone, Jesse Gilliam (City of Seattle), Bob Maruska (WA Ports) - phone, Michael Transue (MCA of Western WA), Vicki Stocker (CMAA) – phone (second half), Andy Thompson (General Contractors, (second half), Donald Laford (CMAA) – phone (second half), Dan Seydell – phone (second half)

Meeting is called to order with a quorum present at 1:10 p.m.

Welcome and introductions.

Approve agenda.

Rebecca: Reads through agenda and makes proposal to change order of agenda to the printed update with the schedule discussion at end.

VOTE: Robynne Thaxton moves to switch order of the agenda. Olivia Yang seconds.

All approve. No oppose.

Review and approve Nov. 18 minutes.

Rebecca: Recovered decision making process document created by committee during last meeting.
Rebecca recommends we stick with approval of the summary included at the end of the meeting minutes given that not everyone has had a chance to review the decision process document.

Change Robynne from being present on the phone to being present in person.

VOTE: Rebecca Keith move to approve the minutes with correction. Robynne Thaxton seconds.

All approve. No oppose.

GC/CM Committee report – Scott Middleton

Scott: Co-Chair of CPARB committee along with Nick Datz. Duty is to establish best practices for GCCM as described under 39.10. Committee meets bi-monthly. Thanks to other committee members for taking part.

Due to tight legislative deadline, the committee focus is on legislative proposals. Once proposals are delivered to RA committee the committee will move to best practice ideas – likely in March.

Committee is looking at legislative changes with a number of goals in mind. Considering legislative proposals with goals for: less prescriptiveness, better transparency, increased and earlier subcontract involvement, more owner engagement, improved timing of payments to subcontractors.

Developing proposals with the above goals in mind.

Have not taken action any legislative proposals as a committee yet but topics have been formed.

1) Risk contingency: contractor's contingency, owner's reserve
Working to clarify what these terms mean – there can be confusion over who gets to control the contingency.

Rebecca: Clarifies that this is not to redefine terms, but instead to clarify.

Olivia: Was there a motion to reduce five percent contingency?

Scott: Was a discussion, not a motion.

Mike: Points out design development contingency.

Scott: Notes the need to define design development as well.

Olivia: Suggests this stay open ended. As an example reducing the five percent contingency. Have to be careful not to make it so prescriptive people do not check boxes without understanding what it means. The creativity comes in gaming the thing, not in being good project managers.

Scott: Notes they will not start debating legislative proposals until the end of Jan.

Scott: Notes that heavy civil construction language scattered throughout 39.10. Should this language all be moved into one place for sake of ease?

Scott's personal opinion is that moving things around will open things up for legislative inquiries or other inquiries but they are looking into it.

Also looking into Section 39.10.350. Change orders and claims. Look to see if there is something to address there.

Mike: Suggests we look back into prompt payment legislation to see if it's a good place to tie in information.

Olivia: Agrees that saying it twice won't fix it.

Mike: Say the same thing as in 39.10 but define it a bit better. Feedback is owner has not reviewed so it is technically under dispute so we do not owe any interest. 39.04.360 will apply to this dispute issue.

Olivia: What about owners delegated authority to pay certain amounts? She does not think legislation can solve that problem.

Mike: If there were a contingency that GCCMs could use the cash flow some of those problems were go away.

Olivia: Problem is a cash flow problem.

Scott: Additional issue: independent audits with heavy civil discussion for lump sum contracts. If trying to be consistent throughout 39.10 it may be a best practice that impacts 39.10.385

Olivia: There's problems with audits in GCCM and DB. Is problem specific to GCCM?

Scott: Does not recall GCCM specific discussion. Looking for further clarity in all cases.

Looking for fee cost allocation and clarity at the issuance of the RFP. This will get all proposers on the same page. Idea is to limit to one price factor with items enumerated at the time of issuance.

Olivia: Point is if you are bidding on this job you know what is in the price factor.

Scott: Aligning public solicitation with DB procurement. If you can harmonize it makes sense to do it.

Olivia: What is .385 issue?

Scott: .385 identifies publication in a legal newspaper. GCCM does not do that. We need to have a proposal about where to go – the idea is to make it consistent.

Align evaluation factors for GCCM selection more closely with DB selection.

Olivia: Points out small business component for GCCM. States that one cannot write in legislation that there is a need for past experience.

Scott: Agrees there is a concern about how to get foot in the door to demonstrate success in doing these jobs.

Olivia: Points out intention was early on to allow firms without GCCM experience to do GCCM.

Scott: Removing language still allows to talk about private and public jobs.

Olivia: Presumably doing JOC for five years could count as GCCM.

Mike: Skeptical that this foot in the door will change as many people have years of experience putting together proposals.

Olivia: If enough owners say they are trying to build a pool of bidders at some point things will change. Acknowledges reasonableness of being skeptical.

Rebecca: Part of the filter the committee was trying to use was that increased competition and access to public works is an important issue for some stakeholders.

Scott: E and MCCM changes – 10.35 – MCA have talked about opening up MCCM to more trades; more inclusion and diversity. Referring this over to the business equity committee. Discussed removing negotiated language. GCCM procurement – removing procurement of bids.

Mike: Statue reads that if the bids are over by \$125K or 2% then you can negotiate. We're saying it should be within 5% of the budget.

Scott: Considering adding language to 39.10.390 clarifying through statute what customarily performed or supplied by means. Add language to look into timelier processing of equitable processing, change orders and claims.

Olivia: If the GCCM had a risk contingency, would that solve the problem?

Mike: As long as you don't [] the interest.

Scott: As the committee goes through this process there are some ongoing technical edits (not substantive).

On Wednesday will go through to make sure all subject matters are included. Will set a deadline of January a week before the first meeting to have legislative proposals in. January will start debating proposals. Some will be low-lying fruit to fix, some may take more time to debate. There will be four meetings to go through the proposals and then come to the reauthorization committee by March. Again, in March the committee will start focusing on best practices.

Also, committee will ask CPARB to have John Palewicz to take the place of Joaquin Hernandez who is no longer able to be on committee.

Olivia: John is an expert and does training. Asks whether Curt Gimmestad is on the committee?

Scott: He is not on the committee.

Olivia: With MCCM procurement GCCM almost has to give the owners guidance.

Scott: Having MCCM and GCCM during design development – there may need to be some flexibility as there are going to be cases where there is sequencing or specific circumstances. You know our MCA position on the mechanical side: there must be some flexibility to address those other situations.

Olivia: If people go to PRC to do their GCCM and do it linearly rather than concurrently you will get yourself a low bid.

Rebecca: Asked about the threshold for self-performance of 30%.

Michael: It was designed to make sure there was an allowance for some self-performance but not everything.

Mike: Points out this is a big number – on an \$100M school it would be \$30M. Typically a firm would do carpentry would be \$6-7M.

Olivia: When GCCM first came out the big fight was low-bid or bust. There was only a small number of firms with GCCM expertise. It's up to responsible owners to start breaking down the work.

Mike: In DBB world if you come to me as a contractor and weigh in on how someone should do this, you are precluded from bidding on that project. Seems like a conflict of interest to allow the GCCM to write a bid package they will turn around and bid on.

Nancy: You still have your designer designing that package.

Olivia: Successful GCCM is predicated on a owner being engaged.

Michael: In the past there was an allowance of self-performance.

Mike: Shows a piece of paper about a high school out to bid. Explains short timeframe for bids being due. 18 working days for \$14.5M bid package.

Rebecca: Points out circumstances.

Mike: Points out that it is not the City of Seattle, Port, WSU doing this work.

Olivia, Mike, Rebecca: Discussion about addressing behaviors of public entities.

Mike: Offers to bring someone who has a grievance board with public entities on underground digging.

Rebecca: Asks if it is an ombudsman or does it have authority to fine?

Mike: Clarifies that the grievance board fines and gives the fines to schools and underground digging.

Break at 2:15 p.m. Return at 2:35 p.m.

CPARB Membership: Discuss proposal to add CM position; update on Public Hospital Districts; Transit Agency Appointment.

Rebecca: Had to reschedule meeting with the Public Hospital Districts due to an urgent situation; notes that she is rescheduling to discuss the position and participation on CPARB.

Discusses proposal to add a position on construction management (to balance out public/private with addition of transit agency appointment).

Olivia: Thought intention was for private industry position to be a CM position. Another comment is that OMWBE could be in same category as legislator members. OMWBE is not an owner – they are public but not owners.

Mike: States it is not balanced now. Much of the group benefits the owners.

Olivia: Architects, others will not necessarily vote with owners.

Rebecca: Points out value of balance and also of invested stakeholders. States someone from CMAA is on the phone – asks them to speak.

Vicki: Benefit is that the CM profession is motivated by the success of the project. Benefit is that the project is successful – not the contractor or the owner. Notes that there must be a harmony within all players of the team within all major capital projects.

Rebecca: Asks Robin H. about the CM position.

Robin: His district has chosen not to outsource the CM position. For owner's representatives to be on CPARB would want to hear more about what they would bring.

Janet: Does not use CM either.

Robynne: Notes that many CMs actually work for public employers.

Donald: We're the losing agenda. The point of CPARB is to make the legislation better. CMs are in a great position to bring suggestions and changes to the alternate project delivery system.

Scott: Suggests an eastern Washington contractor position would be a good private contractor addition.

Robynne and Scott exchange clarifying comments.

- Bob:** Is there an alternative that the transit would replace another public owners. Is labor public or private? Who would appoint a person?
- Vicki:** As a professional group, CMs are growing and there are 500K in the U.S. Our organization is robust. It is a new field that is recognized by civil engineers as a valid place to get their licensing experience. CDA does nothing but CMs. 100 people that represents all the cities from Olympia to Plain. Represents all municipalities including Sound Transit, Port of Seattle, SDOT.
- Donald:** Looking at construction management period. There is not a pure public private decision – all of these folks have good input to work better as we move forward.
- Olivia:** A CM was meant to be a hired owners' rep. An outsourced owners' rep is what we're looking for. Beyond the balance of the board – concerns raised by GCCM practitioners. Maybe PRC would be a better place as technical expertise over politics would be important.
- Santosh:** Olivia's point is a good one. Adding this on PRC would be good.
- Robynne:** RCW 39.10.240 indicates that appointments must be a balance.

Clarification discussion about who is on CPARB and who is on CPARB PRC.

- Rebecca:** What is the ratio of alternative projects to regular projects?
- Vicki:** Generally it is DBB, but the bigger projects have alternative delivery.
- Rebecca:** Asks Robin H. follow up about whether most school districts are like his and use internal CM or if most school districts use outside CM.
- Robin:** He was speaking for his school district and those in his area, but it is not uncommon for school districts of his size or bigger (he is at Franklin-Pierce).
- Rebecca:** Asks CMAA to clarify whether this is public and private position concern?
- Vicki:** We represent both private and public clients but we are a private industry. Our business is a private model but we have clients that are public and private.
- Don:** Opening up for construction managers in the private and the public sector. This is an opportunity for CPARB to add this expertise to make alternative public delivery projects work better.
- Rebecca:** Sound Transit has proposed new transit position would be appointed by the state transit association.

Schedule for the new year.

Rebecca: Observation – would like more to attend in person as attendees get a better sense of the conversation. If there's a way to increase attendance by changing location Rebecca is open. Rebecca also notes that there are not as many issues on the matrix and asks if meeting less frequently would make work more effective. Scott notes that between every-other-week meetings for GCCM and reauthorization there could at least be alternating meetings.

Robynne: Would like efforts focused on the committee work.

Olivia: Seconds monthly meetings for now and more frequently after.

Scott: Maybe there are non-controversial items we could take care of.

People agree but think there is not a need for twice a month.

General consensus for less frequency now – stepping it up in March.

Rebecca: Suggests we move to written proposals on the issues that do not rely on committee input.

JOC committee: need more info on bonding. Need to follow up on the way the word bid is used throughout the whole statute. Needs to have conflict of interest discussions. This should be looked at more holistically throughout the whole statute.

Would there be value in moving towards needing written proposals by a certain date?

Scott: Good idea or run the risk of continuing to have discussions and debate.

Andy: A lot of people relying on the timeline being updated. It's a good way for accountability.

Scott: Will meet Jan. 15 and then will meet every other week. No meetings in December.

Decision to meet monthly Jan. Feb., Mar.

Will do a doodle poll (Olivia would do Monday and Friday).

Andy: His concerns on conflict do not require statutory change, which is the priority for now. He will share with Chair and Vice-Chair of CPARB to determine if they should be addressed (if they are consistent concerns).

Rebecca: Notes there is follow up that needs to happen with the JOC committee. That's why she believes the written proposals will help to move forward. Reauthorization committee should address these issues and ask JOC committee for more information if needed.

Andy: Asks about compliance – where is the right venue for this discussion?

Mike: Thinks compliance should be a three-hour discussion to see where we end up.

Rebecca, Andy, Mike, Olivia discuss pros and cons of focusing on a compliance discussion v. focusing on the statute more broadly as well as the timing of this discussion.

Scott: Ongoing issues – sunset, accountability, teeth, quasi-judicial – should all that come together after March?

Olivia: Is opening the door the right thing to do?

Mike: Expresses strong concerns about accountability and the importance of compliance. Urges group to get issues on the table and work them out.

Rebecca: Concerns about need for specific focus on GCCM.

Mike: States that issues he is concerned about are public works issues.

Dan: Echoes Mike’s concerns and emphasizes that reauthorization is an opportunity to take on private industry concerns.

Rebecca: Asks about what the harm is in written proposals.

Mike: No harm, but with compliance and accountability the group has not talked about this issue yet.

Rebecca: Has heard that we should get GCCM input first – what do people think?

Mike: Does not see the harm in throwing issues on the table to have issues out there and build clarity.

Olivia: Should this accountability issue be in January?

Mike: Accountability and sunset.

Olivia: There is an issue that needs to be talked about: accountability and sunset – possibly in January?

January: JOC/CPARB membership

February: Accountability/sunset/fairness and transparency in selection

March: GCCM proposals, diverse business inclusion/business equity

Other issues: conflict of interest

Rebecca: Decisions – meet once a month. Coordinate with GCCM. Send a doodle poll out. Topics above.

Meeting adjourned at 4:11 p.m.

Minutes prepared by Jesse Gilliam and Rebecca Keith.