

**CAPITAL PROJECTS ADVISORY REVIEW BOARD**  
**Draft Minutes**  
**Office Building 2 – Lookout Room**  
**Olympia, Washington**  
**December 12, 2013**

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<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Daniel Absher	General Contractors	Christopher Hirst	Private Industry
John Ahlers	Private Industry	Chris McCorkle	Specialty Contractors
Vince Campanella	General Contractors	Senator Rodney Tom	Senate (D)
Steven Crawford	School Districts	Vacant	Senate (R)
William Frare	DES (Appointment Pending)	Vacant	Specialty Contractors
Ty Heim	Public Hospital Districts	Vacant	Insurance/Surety Industry
Helaine Honig	Counties	Vacant	OMWBE
Ed Kommers (Vice Chair)	Specialty Contractors		
Robert Maruska (Chair)	Washington Ports		
David Myers	Construction Trades Labor		
Mark Riker	Construction Trades Labor		
Gary Rowe	Cities		
Walter Schacht	Architects		
Albert Shen	Engineers		
Olivia Yang	Higher Education		
Rep. Kathy Haigh	House (D)		
Rep. Vincent Buys	House (R)		

**STAFF & GUESTS are listed on the last page**

**Welcome & Introductions**

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:03 a.m.

Everyone present provided self-introductions.

**Approve Agenda**

*Ed Kommers moved, seconded by Dan Absher, to approve the agenda as published. Motion carried.*

**Approve November 14, 2013 Meeting Minutes**

*Ed Kommers moved, seconded by Vince Campanella, to approve the November 14, 2013 minutes as presented. Motion carried.*

**Public Comments**

Chair Maruska encouraged public comments throughout the meeting.

**Project Review Committee**

***Report from December 5 Meeting***

Linneth Riley-Hall provided a report on the December 5 meeting of the Project Review Committee (PRC). PRC members approved the City of Seattle's recertification application for GC/CM and Design Build (DB). Members discussed the City's lack of data submission for the past three years primarily because the system is not available for any agency to input data. During the previous three years, the City of Seattle inputted project data.

Ms. Riley-Hall invited comments from PRC members.

John Boknecht, representing general contractors, said the recertification was straightforward with all questions addressed.

Chair Maruska referred to the status of data collection and indicated there are several components the Board directed for collection involving Job Order Contracting, DB, and GC/CM data. Ms. Riley-Hall replied that the problems with data submission pertained to GC/CM data. Mr. Boknecht added that the issue was the portal for data submission and the

ability to input information. The City of Seattle has been in contact with the Department of Enterprise Services (DES) to work through the challenges. However, DES is not currently accepting data. City project data are available when the state system is available for inputting information.

Nancy Deakins clarified that analysis of data was completed in 2011 involving some substantial data collection efforts. The analysis was completed on 2010 data in 2011 followed by the completion of the JLARC Report, which resulted in placing data collection on hold pending staff resources and changes to the website. After receipt of the JLARC recommendations, the Board agreed to reevaluate what data would be meaningful. JLARC affirmed the collection of data wasn't providing useful information because of how data were analyzed.

Albert Shen asked whether the issue is lack of adequate resources from the state or the committee. Ms. Deakins cited insufficient staffing within DES. Mr. Shen asked whether the industry could assist with collection efforts. Ms. Deakins advised that the department has since received funding in the current biennium and a decision by the Board is required on the type of data to collect.

Chair Maruska added that prior to the current biennium, DES was directed to reduce costs. Within DES, there is limited flexibility in budget reductions and CPARB funding was reduced substantially to meet reduction directives. Consequently, the ability to staff and fund normal functions, as well as the efforts for reauthorization taxed existing resources.

Steve Crawford reported that during PRC's application review process, the applicant received other comments regarding the City's MBWE outreach and implementation program.

Dan Chandler reported the PRC is anticipating three applications in December for consideration in January.

### **Civil/Heavy Committee Update**

Chair Maruska reported the Board directed the Civil/Heavy Committee to complete some additional work on the proposed language. Ms. Riley-Hall chaired the committee. Ms. Riley-Hall and John Ahlers provided an update on the committee's work.

Ms. Riley-Hall reported that in November, the committee presented draft legislative language to the Board for review and comment. The Board directed additional review of 10 items after providing feedback and recommendations. The committee met following the November CPARB meeting to discuss the recommendations. Ms. Riley-Hall expressed appreciation for the committee's work and recognized committee members in attendance.

Committee representation included small business, labor, contractors, agencies, subcontractors, engineers, and owners. All input was considered during the committee's review process.

The first recommendation was shortening the definition, which has been revised to read, "Heavy Civil Construction Project' means a civil engineering project, the predominant features of which are infrastructure improvements." The inclusion of "unoccupied" was discussed and debated. One of the challenges for owners is the requirement for occupancy certification. Members believed it would be challenging to include "unoccupied" when occupancy certificates are required. Members substituted "infrastructure improvements."

John Ahlers said the committee strived to cover as much as possible within the definition and acknowledged some information is lacking. Shortening the definition requires owners to determine whether projects are considered construction projects and comply with the category of "Heavy Civil Construction Project" rather than prescriptively describing the definition. The committee supports the revised proposal.

The next change pertained to the last sentence within the definition section stating, "No provision of this chapter pertaining to a Heavy Civil Construction Project shall apply to a project unless the public body procuring the project expressly elects to procure the project as a Heavy Civil Construction Project." Instead of including the provision within

the definition, the Board directed consideration of moving the provision to another section. The committee recommends moving the language to 39.10.340(6).

Mr. Kommers recommended eliminating “additional” in RCW 39.10.340 (6).

Bill Frare referred to the Board’s previous discussion on the types of Heavy Civil Construction Projects. He suggested that because of the variety of infrastructure projects that could fall under the definition of Heavy Civil Construction Projects, it might be helpful to define the types of projects. Mr. Kommers agreed the option would be useful while the dilemma is inclusion of the language within the statute. He recommended developing a policy or guideline to provide guidance without including the language in statute because it tends to complicate the statute.

Chair Maruska welcomed Representative Haigh to the meeting.

Ms. Riley-Hall reported the third change was consideration to delete “30% negotiated minimum” under 39.10.370 (7)(c). The committee recommends revised language reflecting, “The negotiated portion of the project shall not exceed 50% of the cost of the work to construct the project.”

Ms. Riley-Hall said the Board was presented with two options tied to permitting a maximum of 50% of the work that is performed by the GC/CM versus the minimum of 30%/30%. The change reflects a maximum of 50% in the language as recommended with the change to 39.10.370 (7)(c). Mr. Ahlers added that the negotiated portion does not exceed 50%; however, 30% is still set aside for competitive bid exclusive of the GC/CM with the possibility of the GC/CM competing for the difference.

Mr. Kommers remarked that the language stipulates that 30% must be bid and the negotiated amount could be 50% self-performed with the remaining 20% performed by the GC/CM only after successfully bidding for the work. The proposal appears to be consistent with the direction by the Board.

Chair Maruska asked whether the recommended language stipulates that the remaining 20% or other remaining component must be declared and negotiated with the owner as part of the maximum allowable construction cost. Mr. Ahlers affirmed that is correct. Mr. Ahlers explained that up to 50% (dependent on type of project and amount determined by owner) of the project can be negotiated. Another 30% could be self-performed by the GC/CM. The GC/CM can competitively participate in the remaining 20% through the bidding process. If successful, the GC/CM could complete 70% of the project. However, 30% is allocated to competitive bids without participation by the GC/CM. The GC/CM cannot participate in the 30%, which will always be available to other participants as part of the public works project.

Mr. Absher pointed out that the GC/CM could bid more than 20% competitively if the GC/CM negotiates less than 50% of the project. The owner could determine that the ratio is 30% negotiated and 40% is competitively bid. Mr. Ahlers affirmed that it would be possible under that scenario. The 50% negotiated amount is the maximum limit dependent upon the type of project and the owner’s desire for the GC/CM controlling a major portion of the project. The set aside for the competitive bid is a minimum of 30%. The goal is ensuring flexibility for the owner.

Mr. Shen asked how the provisions are tied to data collection to evaluate the performance over time because as the market dictates the movement of percentages, it will be important to track to determine if the percentages are effective. Chair Maruska said the Board would determine the appropriate data for collection.

Vince Campanella asked whether there is any expectation to define “subsidiaries” as referenced in language stating, “The general contractor/construction manager, or its subsidiaries.” Mr. Ahlers said the intent is that the GC/CM and its subsidiaries would not participate in the 30% set aside as recommended by the committee. For example, some GC/CMs could own an electrical company. That electrical company wouldn’t be eligible to participate in bidding the 30%. Mr. Campanella asked how the same scenario applies to the 50% negotiated work. Mr. Ahlers said there are no stipulations for the 50% negotiated amount.

Aleanna Kondelis, City of Seattle, said the committee also discussed terminology in terms of the negotiated portion of a contract, self-perform portion of the contract, and how it ties into several other parts of the statute. For instance, within the procurement section, the GC/CM must declare the percentage of self-performance while section 39.10.390 stipulates that the GC/CM must customarily perform and bid for the 30%. The proposal is a different concept. The negotiated amount is up to 50% of the maximum allowable construction cost. It may be negotiated but not self-performed and there likely will be questions logistically of how to incorporate the requirements of RCW 39.10.390 because there are no recommended modifications to that section. The provisions in that language do not necessarily correlate to the proposed language at this time.

Mr. Ahlers responded that retaining the term “negotiated” maintains the flexibility because part of the negotiation process could include small business or DBE elements within the amount. The committee wanted to ensure that the 30% would always be available for competitive bidding with non-participation of the entity successfully awarded the GC/CM contract.

Representative Buys asked about those circumstances where completion of some components of the project that the GC/CM has negotiated might exceed the allowable percentage and whether the provision includes any flexibility in those situations. Mr. Ahlers replied that because of the broad participation of general contractors on the committee, those members believed the provisions incorporate sufficient flexibility and that it would be possible to work on other areas to satisfy the 30%.

Phil Lovell added that the committee extensively discussed the definition of “self-performance.” As a result, members recommended removing references to “self-performance” and retaining “negotiate” because it provides more flexibility for public owners to determine how they award the project. Typically, bid packages developed for the scope of work are complete. It’s seldom one contractor completes 80% of the work and then needs another contractor to complete the job. It’s about the division of the work and allocation of subcontracts and purchase orders, which is common in the industry. He noted that “self-performance” is included in statute and there is no suggestion to remove it; however, the committee believed it wasn’t beneficial for this particular guideline. The Board may want to consider the issue during the policy discussion.

Alan Nygaard, University of Washington, commented that the university’s GC/CM projects include elements of the project where no bidders respond to the bid. It is the GC/CM’s responsibility to ensure the project is completed. He questioned the impact to the GC/CM and to the project if there are no bidders for the 30%. Chair Maruska asked how the university currently handles projects with the existing requirement of 30%. Mr. Nygaard said the university would need to release a new bid and the GC/CM would need to bid competitively for that portion of the project. Although there have been some limited situations, there have been instances where the university received no bids requiring the GC/CM to assume self-performance of an element of the contract.

Mr. Ahlers said that type of situation wasn’t addressed in the recommendation. It could be addressed by adding language acknowledging that in the event there are no competitive bids, an exception could be included. The committee’s concern is with the trust placed on GC/CM to develop fair packages to ensure bidders. If an exception is included within the statute, it leads to concerns that the GC/CM may not strive to attract bidders. Labor representatives stressed the importance of including the provision as well as the small business community.

Mr. Nygaard recommended the inclusion of higher thresholds because without some exception it might limit the flexibility to deal with those circumstances.

Ms. Riley-Hall remarked that although the committee did not discuss that specific scenario, it is something that could happen. She suggested including some language addressing those circumstances allowing the GC/CM to bid to self-perform. It also could be addressed during the policy discussion.

Mr. Boknecht commented that from a contractor’s perspective, he’s supportive of the 30% to address some of the concerns that have been raised. He suggested the option of having the PRC address the concern.

Mr. Campanella noted that the same rule would apply to buildings.

Mr. Frare asked about the frequency of the issue. Mr. Campanella said he's never experienced the problem, but foresees that it could become a problem dependent upon the size of projects. Some bid packages did not receive any bids with the owners initiating change orders for self-performance by the GC/CM. Those circumstances were limited and did not infringe on the 30%.

John Boknecht added that he's also experienced no bids that required restructuring the bids into smaller packages that were more attractive.

Chair Maruska said it appears to be incumbent upon the public owner and the GC/CM during the negotiations and in establishing values, to build in a lower maximum to allow some flexibility rather than including language in the statute assuming they will self-perform to the maximum with a contingency included. Mr. Ahlers said those considerations could be addressed in the white paper in terms of best practices recommendations. The intent was limiting prescriptive language and affording some flexibility; however, flexibility also bumps against gray areas. It could be addressed through a best practices publication, which he supports.

Ms. Riley-Hall said item 7 within the Board's motion was reducing or eliminating text referring to prescriptive requirements. The committee reviewed the document and eliminated prescriptive language within RCW 39.10.370 (7) (a-h).

Item 8 within the motion recommended inclusion of a provision clarifying the fee and its application to the negotiated work. The committee recommended additional provisions requiring the owner to include the fee within the solicitation and indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated portion of the project.

Chair Maruska asked whether the provision would enable the public owner to include the GC/CM's overhead and profit in terms of how "fee" is defined versus the fee for the construction manager, which is a percentage of the total. Mr. Ahlers said the intent of the language is affording the owner the flexibility to indicate how the owner will consider the fee in the negotiated portion versus fee for the management of the entire project. The provision requires the owner to disclose to the bidders the components of the fee to avoid any confusion and to enable bidders to structure their bids accordingly.

Mr. Absher said it appears the premise of including the minimum is ensuring that the contractor is self-performing and engaged in the actual work. By removing "self-performance," that assurance is eliminated. He asked about the committee's discussion in that respect. Mr. Ahlers replied that the committee discussed how owners would determine whether it makes sense as not all projects would have 30% negotiated elements. The intent is to maintain control of the schedule and the project. Inclusion of "self-perform" creates too much speculation about what it entails. Mr. Absher said it is somewhat ironic because the purpose of the effort is that the 30% self-performed limit didn't work for Heavy Highway, which has now been removed. It could be possible for a contractor to negotiate and bid all elements of the project. Mr. Ahlers said it would depend on the owner allowing that circumstance. The intent is the trust factor that the public works owner will properly administer the contract properly. Mr. Absher pointed out that there is no requirement for self-performance. Mr. Ahlers acknowledged the provision doesn't speak to self-performance.

Walter Schacht reiterated the concern because it's important to consider the principle for developing this particular alternative for GC/CM. According to his understanding, the problem was in securing GC/CMs for Heavy Civil Projects because there wasn't sufficient work for the heavy civil general contractors who are more successful if they self-perform a significant amount of the work because of the equipment owned and labor force, etc. The Board wanted to ensure the GC/CM was an available procurement type for heavy civil. He may have misunderstood or it wasn't discussed that controlling the schedule or having more control over subcontractors was the reason for creating the alternative. The intent was securing large GC/CMs for heavy civil projects. He understands why "self-performed" is a complicated word, but does not understand how opening to all-negotiated supports the original intent of this effort. He questioned whether the language for GC/CM building projects would solve the problem.

Mr. Absher said that in practice, building GC/CMs self-performing packages are referred to as performing with their own forces. His concern with inclusion of the language is the lack of self-performance and the potential of the GC/CM bidding all the work.

Mr. Lovell accepted responsibility for addressing the issue to the committee in terms of what defines “self-performance.” Language currently within the statute includes “self-perform” in procurement section 39.10.360. The committee believed it was important to retain the flexibility for the owners and the GC/CMs to determine the details of a specific project with the goal of the GC/CMs self performing more work. Part of the discussion included the potential situation where the building contractors would bid for heavy civil projects because of the possibility self-performing or the heavy civil GC/CMs bidding on building projects. It likely wouldn’t happen as civil contractors are heavily invested in equipment, infrastructure, and labor to perform that type of work. They need to perform more than 30%, which is what instigated the original discussion, as the 30% limitation was a restriction on heavy civil contractors.

Ms. Riley-Hall suggested it also should not preclude any criteria, which speaks to the intent to self-perform, which is something the owner could evaluate after receipt of submittals.

Ms. Kondelis commented that part of the self-performance discussion also pertained to who controls the work, scheduling, and completion of the work. She suggested not derailing the hard work of the committee around the discussion between “self-perform” and “negotiated” because there are existing controls affording flexibility to owners.

Mr. Boknecht said that as a civil contractor, self-performing language would be challenging because there are second tier subcontractors within specific scopes of work. Many sub-tier trades are part of the 30%. Retaining “self-performance” language could lead to confusion or create problems. That’s the challenge that’s been addressed by using “negotiated” to substitute for “self-performance.”

Ms. Riley-Hall added that including “negotiated” was supported by small business and minority business representatives. Inclusion of “self-perform” would preclude the negotiated aspects of soliciting small and minority business participation.

Mr. Shen asked how small and minority businesses were engaged in the discussion. Ms. Riley-Hall said representatives from DES and OMWBE attended and participated in the committee meetings.

Ms. Riley-Hall reported the ninth item was to include a provision that requires the GC/CM to specify a fee on the negotiated work as part of the RFP. The committee included language under RCW 39.10.360 (2)(b)(III).

Mr. Ahlers said the language is included as requested by the Board. The section pertains to whether the fee on the negotiated portion of the work is disclosed in the RFP prior to scope of work defined. The committee recommended against inclusion of the provision because the provision requires the contractor to provide a fee on an undetermined scope of work and the owner may not receive the best or most applicable fee. However, if the fee is not disclosed prior to completion of the scope of work, the owner could be subject to the contractor establishing an unrealistic and high fee. The committee recommends that disclosure of the fee should be at the owner’s discretion. Additionally, the issue could be addressed through the white paper. Feedback received from the Board since the committee’s review reflects that the language should be retained as submitted.

Chair Maruska asked whether the owner could define what’s included within the fee. Mr. Ahlers said the owner could ask the GC/CM to disclose the fee on the negotiated elements and it could include overhead, profit, or benefits, etc.

Mr. Absher said two issues surrounding the proposal pertain to public policy issues whereas half of a public project is negotiated without any knowledge of the fees associated with the project, and secondly, an unintended consequence of GC/CMs competing for projects is disclosing the negotiated price but not disclosing the fee for self-performance. It might be possible for a creative GC/CM to assess zero on the GC/CM fee and make up the difference in the self-perform component.

Mr. Ahlers reported the Board requested the inclusion of the language. The committee proposes to leave it to the discretion of the owner to determine at what point the fee should be disclosed on the negotiated elements of the project.

Ms. Riley-Hall said the main challenge was because of uncertainty in terms of the extent of work performed by the GC/CM. It would be very difficult to determine what the fee should be at that time. Asking a GC/CM to propose a fee on an unknown scope of work is problematic for the committee. Options could be addressed through the white paper

Mr. Absher offered that it would be incumbent upon the public owner to structure the scope in a way to determine the fees in terms of providing some form of a measuring stick. Leaving it open puts the public at risk financially and could be problematic for the selection process.

Mr. Ahlers remarked that he agrees but that the committee struggled with the options. He understands both sides of the issue. The Board has already unanimously agreed the fee should be included. Ms. Riley-Hall said the intent of the briefing is advising the Board on the extent of the discussion after direction by the Board. Mr. Absher acknowledged the efforts of the committee to achieve the mutual goals of the Board and the committee.

Mr. Shen asked about the timeline of the committee's efforts. Mr. Kommers said the topic originated during the reauthorization process several years ago. The committee has completed some amazing work because at that time, the Board was unable to achieve any progress and some of the comments jeopardized the reauthorization. The Board agreed to defer the topic and reassign it to subcommittee after reauthorization. The committee has worked for a short period but has met many times. Mr. Ahlers said the committee has met approximately 12 times with an average attendance of 30 people. He acknowledged the efforts of Ms. Riley-Hall as chair and moving the committee in one direction. The topic was identified last year as a high priority item with commitments to the community to begin moving forward.

Mr. Shen asked how the Board could ensure accountability after legislation is implemented. He complimented the committee on its efforts.

Mr. Lovell commented that if the owner is required to ask for the fee on the self-performed work, there are provisions within the statute allowing that to be part of the competitive process in terms of the award of the base contract. Secondly, language included within the section also stipulates that if the owner cannot successfully negotiate the negotiated portion of the work, the owner has the right to seek another GC/CM.

Ms. Riley-Hall said the last request was including a provision requiring an independent audit, which is similar to existing language in RCW 39.10.385. In RCW 39.10.340 (6), language was added requiring an independent audit.

Mr. Kommers suggested several edits:

- RCW 39.10.280 (1) replace "indication" within the last sentence to reflect "declaration."
- RCW 39.10.370 (7) (a) (III), replace "bases" with "basis."

Mr. Kommers expressed concerns with the language within RCW 39.10.370 (7) (f) stating, "If the public body is unable to negotiate to its satisfaction any component of this subsection (7), negotiations with the firm shall be terminated..." The reason for his concern is because providing the public body any reason for eliminating the GC/CM alternative is not a good idea. He asked whether there was some thought by the committee for the inclusion of "any." Mr. Ahlers suggested that including "good cause" might be a better substitute. The intent was ensuring public owners had the opportunity to withdraw from the negotiations. Mr. Kommers said the intent is reasonable when the situation involves an unreasonable contractor; however, the public owner should not have the right to dismiss a GC/CM, which has expended resources developing a proposal, because they may disagree with some elements of the proposal. The inclusion of "any" sets the bar too low. He suggested the committee should consider replacing "any."

Ms. Kondelis pointed out that the current statute allows a public body to withdraw from negotiations for a maximum allowable construction cost. The intent is to afford the same provision in the legislation. The option is warranted if an

agreement cannot be attained during negotiations. Mr. Kommers said his recommendation is not eliminating the language other than replacing “any.”

Mr. Ahlers recommended eliminating “any” and replacing with “its reasonable satisfaction...” Mr. Kommers agreed with the recommendation.

Mr. Kommers took exception to the provisions adding the inclusions under RCW 39.30.060, particularly in modifying the Design-Build section. Although understanding of the concerns about the bid listing requirements and excluding them, the requirements were previously included in the statute and the Board removed it from RCW 39.10. Eliminating the provisions will bring unwanted attention to the proposed bill and could detract from the good work and passage of the proposed legislation. It should be a topic of discussion at another time.

Mr. Ahlers replied that at some point, the insertion was added because of the confusion when bid protests have occurred. It’s not clear whether the statute applies to the Design-Build alternative. When those issues have been raised, addendums were issued stating the statute didn’t apply. The committee suggested it would be a way to address the issue, although it’s somewhat beyond the scope of the committee’s charge. If that section affects the passage of the proposed legislation, the committee would likely agree to remove the provisions.

Chair Maruska suggested some of the changes to statutes referenced in RCW 39.10.340 should be reviewed with the existing statute to ensure the sections are correctly cited.

Chair Maruska recessed the meeting from 10:37 a.m. to 10:55 a.m. for a break.

Representative Haigh thanked the Board and committee for its work. She contacted staff for drafting the legislation. It’s also important to involve a Senator. She suggested forwarding the bill to the Capital Budget Committee directly with work beginning immediately to draft legislation because of the short legislative session.

Representative Buys said he is committed to working with Representative Haigh to pursue the bill and looks forward to working with the Board through the committee process and public hearings.

***Daniel Absher moved, seconded by Vince Campanella, to accept the Civil/Heavy Construction Projects Committee’s recommendation with the following amendments:***

- ***Change “negotiated” to reflect “self-performance.”***
- ***Retain RCW 39.10.360 (2) (b) (III) regarding proposer fee as stated in the recommendation.***
- ***Accept edit changes offered by Chair Maruska and Mr. Kommers.***
- ***Direct the Board to produce guidelines on self-performance and provide owners direction on how to define fee in the RFP.***
- ***Remove references to bid listing (RCW 39.30.060).***

Mr. Schacht asked whether the legislation authorizes any pilot projects, serves as a temporary test period, or is permanent legislation enabling owners to utilize the alternative method immediately. Chair Maruska advised that passage of the bill would permanently authorize owners the unrestricted use under the appropriate conditions. All statutes are subject to amendment. Certified public owners in GC/CM would need only to declare and then begin utilizing the alternative method.

Mr. Shen asked for clarification of the white paper guidelines for the definition of “self-performance” and whether the intent is to define “negotiated” versus “self-performed.” Mr. Absher said the language as submitted is somewhat ambiguous. However, it would also be difficult to define “self-performance” that would have any statutory impact. The guidelines should provide direction on what “self-performance” includes. GC/CM legislation for building projects has included “self-performance” for the last 20 years and there have been no issues. Transferring similar guidelines that have been effective for the last several decades would provide owners and contractors with the necessary tools for identifying what’s considered “self-performance.” He suggested eliminating “definition” from the amendment.



Mr. Shen expressed concerns based on the intent of the committee to provide the owner with some flexibility. The intent is also to ensure small businesses have opportunities. He questioned whether the guidelines include more prescriptions. Mr. Absher agreed “self-performance” is more prescriptive than “negotiated.”

Mr. Ahlers pointed out that the participants from the small business community were clear that they wanted to ensure that within the negotiated portion they would have the opportunity to participate because that element is work controlled, such as in the case of a slab finishing contractor who performs the slab finishing work on concrete poured by the general contractor. The committee moved away from “self-perform” because of concerns surrounding self-performance of the GC/CM’s own resources. Many small business members participating in the committee did not have the same experience level as building contractors have with existing legislation describing self-performance. He understands that the issue would be vetted through a white paper but questioned how to ensure those participating in the committee process agree the proposed motion is the same proposal vetted by the committee. He’s unsure whether voting for the motion represents the same concept that the committee supported.

Mr. Ahlers said the concrete example could be included in the white paper as an example of a self-performed concrete package where it’s common for GC/CM to use finishers. That would be an acceptable part of the self-performed package.

Mr. Ahlers suggested substituting “negotiated self-performance.”

***The makers of the motion accepted a friendly amendment by Mr. Shen and Mr. Ahlers to substitute "negotiated self-performance" for "self-performance."***

***The motion carried unanimously.***

Mr. Kommers commented on the next steps by the committee to help support the legislative process through development of a legislative strategy in support of the proposed legislation.

Chair Maruska described the process for drafting the bill language through Steve Massey. It’s anticipated that there will be questions or suggestions from staff during that development process. The other component is ensuring there is adequate support in moving the bill through the Legislature. Some CPARB bills submitted during short sessions did not complete committee processes. It’s important for the committee to actively support the legislation to ensure it moves forward.

Mr. Ahlers said there are several members of the committee who want to participate in the development of the white paper. Chair Maruska said if the legislation passes, the Board would likely appoint a committee or develop a process to complete the white paper.

Mr. Kommers commented on previous efforts by the Board to ensure legislation is passed. He recommended the committee consider appointing a legislative monitor/liaison to inform the committee on the progress of the bill to monitor problems, stalls, or to schedule visits to committee members as required.

## **Committee Report**

### ***DB Life Cycle Cost Study – Draft***

Mr. Kommers provided an update on the work of the committee. The request to the Board is to approve the Life Cycle Cost Study as directed in SHB 1466, which reauthorized RCW 39.10 and provide the Chair, Vice Chair, and staff with the authority to make any final revisions prior to the submittal due date of December 31, 2013.

The draft materials include three documents to include the draft report, appendices, and Competitive Risk Management, which is an unintended consequences paper. The request is to approve the draft report and the appendix. The third document was developed later and did not receive consensus by the committee with some members expressing concerns about the document.

The Life Cycle Cost Committee and participants are listed in Appendix A. Many individuals participated on the committee. The report represents remarkable work that includes a collection of resource data. The basis for some important elements of the report include the definitions and state-of-the-art of life cycle costs (Section 3) drafted by Mr. Schacht and his team. Section 3 provides a good basis as a platform for further CPARB and other public body work within the life cycle cost arena. Section 3 focuses on barriers, opportunities, and issues with a summary discussing life cycle cost analysis and how it fits with energy efficiency and design. The directive by the Board in producing the report was under the DB section of RCW 39.10; however, life cycle cost analysis could be utilized in any of the procurement mechanisms and during the design process.

Additional sections include a discussion on what CPARB is recommending to the Legislature in terms of statutory work. The section was authored by Chair Maruska. The section points to the need for some changes in statute regarding life cycle costing and cautions the Legislature about the changing environment. The message is cautious in acknowledging that although some changes should be considered, the Legislature needs to be aware of mandates and prescriptions that should not become out-of-date when legislation is finally passed. The suggestions are fairly well articulated in the report.

Another section is a suggestion to CPARB to pursue a number of actions. After submission of the report, the Board should consider reviewing a menu of considerations and appoint some committees to explore life cycle cost analysis applicable to GC/CM, Design-Bid-Build, or other procurement methods.

The executive summary includes a table of the statutes that will include a summary of responses for each line item within the directive of the statute. The committee addressed all the items it was directed to consider. The executive summary hasn't been finalized and will be completed by the Chair, Vice Chair, and staff.

The Competitive Risk Management document was authored by Van Collins with AGC, which includes a summary of concerns about risk management and unintended consequences. Although, there are many good points in the document, it doesn't necessarily reflect the narrow focus of the report. Some committee members do not agree with some of the comments. Other items in the document are captured in the executive summary while other items did not achieve committee consensus. The committee recommends that if the author wants the information to move forward, it could be included in a letter and incorporated as an appendix to the report.

Mr. Schacht remarked that there was some controversy during the evaluation by the Legislature during the reauthorization bill regarding life cycle cost analysis especially when applied to DB. The Legislature referred the issue to the Board. However, life cycle cost analysis is a remarkably uncontroversial topic and is considered a tool. The process revealed the importance of being more comprehensive in how design decisions are made for public buildings because it's an effective ways to achieve outcomes. Within Washington State, which has a high focus on energy efficiency and high performance buildings, having a strategic understanding of what the owner wants and delivering that as early as possible in the process creates an effective outcome.

In terms of available tools, the state currently has ELCCA (Energy Life Cycle Cost Analysis). The tool and spreadsheet are used by DES and are an effective mechanism as any other tool used throughout the county. The tool doesn't require any adjustment and constitutes state-of-the-art. The tool doesn't need to be overhauled but rather determining how it's applied, when it's applied, and how the information is used.

The last issue, which addresses some of Mr. Collins' concerns, is considering what happens after the building is completed and occupied. As buildings become more complicated, larger, and as new technologies are included along with building science to increase energy efficiency, the outcomes are much more variable. The project delivery system is based on providing the owner with the keys and leaving with the hope that everything in the building works. That's not occurring today and life cycle cost analysis can be a mechanism that keeps the design team, commissioning agent, contractor, and the owner together for at least a year after the building is occupied. It could have a significant difference in the success of outcomes. Life cycle cost analysis may have more long-term benefits.

Chair Maruska summarized the proposed recommendations within the report. It's also interesting to learn that many decisions on projects are not based on lowest life cycle costs. When the tool is used, there are other overriding factors that could involve environmental or sustainability.

Gary Rowe said the list of recommendations include monitoring and tracking several projects. He asked whether that would be a task of the committee or the Board. Mr. Kommers said the committee's recommendation to the Board is considering the monitoring or establishing a subcommittee to monitor and provide a report on the projects. Mr. Rowe said if the state expects to receive this type of information there should be some expectation of the project owner or something in the legislation to require the information rather than tasked to a Board committee or the Board. Mr. Kommers said the intent is not producing any information as the projects are under the capital budget and include specific requirements. The Board is suggesting that there are practices on the project that will aid the Board in learning about best practices. The projects may generate best practices that the Board may want to consider for further work. Mr. Rowe said his concern is burdening Board or staff resources.

Representative Buys noted that the new DES Building is a high performance building. He asked about the availability of any data on the expectations when the building was designed versus actual returns on the project. Ms. Deakins advised that the Jefferson Building was not a public works project but a developer lease-back project. The 1063 Block Replacement Project is replacing a block of buildings with a new office building with high performance requirements and a five-year performance guarantee. The project requires life cycle cost analysis of the proposals submitted for the project. The statute includes some goals for the project as well as goals developed by DES in the RFP recently released.

Representative Buys said he's unsure of the procurement methods for the projects listed in the report. Mr. Schacht said the projects vary in the report. Chair Maruska said there are also more project examples in the appendices.

Mr. Kommers referred to some interesting case studies in the appendix, as well as a flow chart on how to evaluate life cycle costing within the DB and the Design-Bid-Build processes.

Mr. Kommers requested the Board's approval and authorization for the Chair and Vice Chair to complete the report prior to submittal to staff to meet the delivery deadline of December 31, 2013.

Mr. Schacht said the Board's charge in 2013 was examining Substitute House Bill 1466 for life cycle costs analysis and energy efficiency related to the design build procurement process. During the summer, the Governor issued Executive Order 1303, which sets life cycle costs analysis as a paradigm for design decision-making and a threshold to achieve for release of funds from the Office of Financial Management (OFM). He questioned the timing for integrating the Board and OFM's efforts. Ms. Deakins said staff is scheduling a meeting with some experts who provided input on the report with OFM. The schedule for developing a life cycle cost model tool for agencies to use is within 180 days or by the end of February. The group is meeting next week and she was invited to attend and plans to invite some members of the committee. DES has been tasked to develop sustainable design principles in conjunction with the tools with a similar deadline. A DES committee is working on the task. She has reviewed with OFM the importance of ensuring all stakeholders have an opportunity to comment and provide input.

***Gary Rowe moved, seconded by Helaine Honig, to accept the report and authorize discretion to the Chair and the Vice Chair to make necessary changes to complete the report for submission. Motion carried unanimously.***

### **Data Collection**

Olivia Yang reported the proposal from the public owners group is to shift data collection from a policy level and the issue of accessibility to public works contractors. The proposal includes not collecting information on schedules or budgets because of the impossibility of two similar projects that are constructed under the traditional procurement and one constructed under the alternative procurement method. Rather, the proposal is for owners to submit data on contractors and subcontractors responding RFQ/RFPs. If the Board agrees, the recommendation is to begin working with DES to format the website.

*Olivia Yang moved, seconded by Ed Kommers, to reformat the data collection effort to reflect a policy issue of accessibility to public works and to reformat the data to capture at different levels of the solicitation, the different contractors applying or selected for RFQ/RFPs, as soon as administratively possible. Motion carried unanimously.*

Chair Maruska commented that the statute requires data reporting. He recommended a motion to continue using the existing forms for data collection.

Ms. Deakins reported the Job Order Contracting Users Group met yesterday. The group is chaired by DES staff. The intent is to input data for the last year rather than collecting data for two years because of difficulty of securing the information on contracts older than a year.

*Ed Kommers moved, seconded by Vince Campanella, to acknowledge that the current reporting format will be used for the past year for data collection. Motion carried unanimously.*

**Set Agenda Items for February 13, 2014 Meeting**

Agenda items for the February meeting include:

- Report on Heavy Civil
- Feedback on Life Cycle Costs Report
- PRC Report
- Session Status Report

**Approve 2014 Meeting Schedule**

Chair Maruska reviewed the proposed 2014 meeting dates of February 13, May 8, September 11, November 13, and December 11, 2014.

*Ed Kommers moved, seconded by Vince Campanella, to approve the 2014 meeting dates as published. Motion carried unanimously.*

**Adjournment**

**Ed Kommers moved, seconded by Olivia Yang, to adjourn the meeting at 11:55 a.m. Motion carried.**

**Staff & Guests**

Nancy Deakins, DES  
Danelle Bessett, DES  
Tom Gow, Puget Sound Meeting Services  
James Lynch, Ahlers & Cressman  
Linneth Riley-Hall, Sound Transit  
David Mahalko, King County  
John Boknecht, Stacy & Witbeck  
Aleanna Kondelis, City of Seattle  
Alan Nygaard, UW

Ted Lucas, Sound Transit  
Jim Borrow, King County  
Angela Wolfe, NEEC  
Phil Lovell, PRC  
Dick Lutz, Centennial  
Jean-Claude Letourneau, Schacht aslant Architects  
Adam Stickle, Schacht aslant Architects  
Steve Wood, Stacy and Wit beck  
Dan Chandler, PRC

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Robert Maruska, CPARB Chair