

CAPITAL PROJECTS ADVISORY REVIEW BOARD
Final Minutes
1500 Jefferson – Presentation Room
Olympia, Washington
September 10, 2015

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Lee Newgent	Construction Trades Labor	Mark Riker	Construction Trades Labor
Ty Heim	Public Hospital Districts	Vacant	Senate (R)
Senator Bob Hasegawa	Senate (D)	Gary Rowe	Counties
Steven Crawford	School Districts	Rep. Vincent Buys	House (R)
Santosh Kuruvilla	Engineers	Christopher Hirst	Private Industry
Alexis Oliver	OMWBE	Greg Fuller	Specialty Contractors
Robert Maruska (Chair)	Washington Ports	Vacant	General Contractors
Alan Nygaard	Higher Education	Vacant	Specialty Contractors
Rep. Hans Dunshee	House (D)	Vacant	Private Industry
Walter Schacht	Architects	Charles Horn	Insurance/Surety Industry
Bill Frare	State Government		
Rebecca Keith	Cities		
Andrew Thompson	General Contractors		

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 9:00 a.m.

A meeting quorum was attained.

Everyone present provided self-introductions.

Approve Agenda - Action

Chair Maruska adjusted the order of the meeting agenda to ensure items requiring a vote were considered first because of the planned early departure of several members.

Nancy Deakins noted the published agenda is different from the agenda before the Board. The agenda item following the break was changed from “Building Envelope Legislation” to reflect “DES Agency Legislation – Proposed Changes to Small Works Roster/Building Envelope.”

Andrew Thompson moved, seconded by Alan Nygaard, to approve the agenda as amended. Motion carried.

Approve May 14, 2015 Meeting Minutes - Action

The following change was proposed to the minutes of May 14, 2015:

- Under Welcome & Introductions, revise the second sentence in the fourth paragraph to reflect, “She works for the City of Seattle in the City Attorney’s Office.”

Andrew Thompson moved, seconded by Alexis Oliver, to approve the May 14, 2015 minutes as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Chair/Vice Chair Elections - Action

Chair Maruska reported on the Governor's reappointment of Walter Schacht, Santosh Kuruvilla, and Mark Riker to another term on the Board. The Governor's Office has not advised him of the four remaining appointments. With the departure of Ed Kommers as the Vice Chair, the intent is to include new appointees in the election of the Vice Chair and Chair.

Chair Maruska recognized the arrival of Representative Dunshee.

Ms. Deakins advised that in preparation for the next meeting, information would be provided to members to help prepare for the election of officer positions on the Board. The intent is seeking nominations from members for both Chair and Vice Chair. Some previous discussion was indicative of the desire for the Chair not to represent special interest groups. The Board previously discussed limiting the chair position to public owners.

Tor Jernudd, Office of the Attorney General (AGO), reported on his assignment to represent DES Engineering and Architecture Services Department, CPARB, and the Project Review Committee (PRC). He attended one PRC meeting and spent time with previous legal counsel and DES staff on training for the assignment. He noted he has no background in the construction industry; however, he has advised members of the Operating Procedures & Bylaws Committee and the small works legislation proposed by DES.

Last week, information was received about a case involving antitrust liability and immunity the state has been granted for antitrust actions since World War II. In the 1940s, the Supreme Court ruled any state action was immune from antitrust liability, which has since ended. State actions by active market participants, such as actions by a board where members of the board are controlled by active market participants could give rise to antitrust liability and a challenge could be a possibility. The risk is more so for the PRC than the CPARB as a whole, because the PRC regulates trade through approvals of project applications in an industry where members are active market participants. The Supreme Court did not define control, such as a majority, a chair, or merely the loudest or most influential members of a board. The Supreme Court ruling involved teeth whitening in North Carolina whereby the dentists, who were active market participants because they practiced dentistry and served as members of a board, sent out cease and desist letters to non-dentists providing teeth whitening services. The Supreme Court ruled that it was a violation of antitrust laws because it restrained the offering of teeth whitening services. The obscure case could have far-reaching consequences. Because CPARB's membership is comprised of a number of active market participants who are members of the trade the Board regulates, this particular case law is important and is meant to serve as a caution.

Chair Maruska asked whether the AGO plans to issue advisories/guidelines to the state's other boards and commissions. Mr. Jernudd said he was informed of the case by the AGO's Antitrust Division. Enforcement of antitrust laws is primarily the responsibility of the federal government. However, individuals and the State's Attorney General can also bring antitrust charges. The AGO advises all the state's governing boards on new case law.

Ms. Keith asked whether the Board would be in a different situation where industry representatives are from discreet industries. For example, Mr. Schacht could not cast a lone vote to regulate architects because the Board renders decisions by a majority vote.

Mr. Jernudd said that the specific case law was recently released and the answer is not definitively known at this time. However, to the extent that the interests of the boardmembers are divergent, it would be more difficult to determine that it was controlled.

Ms. Deakins noted that PRC panels are comprised of six to eight members. If the majority of the panel were contractors or subcontractors versus owners, there could be some negative perceptions.

Mr. Jernudd said the information speaks to the importance for the Board and the PRC to be cognizant of the existence of the potential liability or appearance. There is an overlap between ethics in conflict of interest and antitrust because following the right path from those perspectives likely wouldn't expose the Board to antitrust liability.

Chair Maruska referred to the draft bylaws the committee is working on. The intent is to clarify the chair and vice chair terms and the nomination and selection process, as well as some comments on how to handle participation on different actions at the committee level. The intent at the next meeting is to review and approve the bylaws and then act on officer elections.

Mr. Schacht asked whether Chair Maruska was considering submitting his name for consideration. Chair Maruska said he's been chair since 2007. Many of the chair's efforts are conducted beyond the Board requiring demands on both time and supporting the Legislature dependent upon the legislation submitted. He would be willing to consider serving as chair for another term but over the long-term, it's important to consider the needs of the Board. Earlier discussions by the Board focused on officer positions and representation by the private sector and public owners. At that time, membership agreed that because of the responsibility and activities, a public owner might be the better option with private sector serving as the Vice Chair. He's willing to serve for at least another year or perhaps longer. However, there are also some other great candidates to consider.

Mr. Schacht said most members are aware of the level of participation and time commitment for both the chair and vice chair. He asked about the process that the Board might follow to identify individuals who might be interested in serving.

Chair Maruska said the process is up to the Board. If there is interest by members to serve, they should contact other members and share their interest. Members are able to nominate other members. Serving entails a commitment of time. As the chair, he also represents the Board rather than an entity. When the Board provides direction, he represents the Board as a whole, which is important for members to consider in terms of their particular representation and alliance, which may differ from the Board's position. The credibility of what the Board determines as a group must be maintained.

Ms. Deakins added that when potential member candidates contacted her regarding the duties of a member of the Board, she typically provides a brief description on the time commitment. She suggested documenting the duties of the chair because of the amount of time behind the scenes in addition to meetings to help those who might be considering the position. Chair Maruska encouraged members to contact him for additional information. Essentially, the job also entails the complaint department because people who are unhappy contact him, which could include a public owner, a subcontractor, or a labor issue. The chair also strives to build constituencies among all entities because of the number of bills or interests. He recently has been working with Ty Heim and the Hospital Board on some interests the Hospital Board wants to move forward and is assisting in identifying a reasonable approach for bringing the issues forward to the Board or to other industry groups, as well as working with agencies, such as DES on a number of other activities. The chair also works on the budget, funding requests with DES staff, appointments, and establishing meeting agendas.

Santosh Kuruvilla questioned whether it's important for members to have some tenure on the Board to maintain continuity and knowledge. Chair Maruska agreed that tenure is important but the difficulty is in determining what the term should or shouldn't be for the chair and vice chair. Previously, he and Ed Kommers served for many years, which provided continuity and balance. Members should consider whether that represents value and should that practice continue or should terms be limited for a specific period. Many members are knowledgeable about the process and have participated in different activities. It also requires the ability to work collectively and find compromises and solutions that make sense to recommend to the Legislature while bringing all the interests together to the conversation. It's much easier to kill pieces of legislation than to advocate as a body to pass legislation, which is the value of CPARB, as the Board is able to work through differences and present legislation without testifying in opposition or arguing amongst the membership for a particular bill.

Andrew Thompson said that as a new member of Board serving for six months, he thought the Board was a forum for alternate procurement, which it is, as well as much more. He has become much more aware that the Board is a forum for anything in public contracting. The Board provides an opportunity for anyone to speak up and provide their respective insight. There is more to membership than RCW 39.10 and the advice the Board attempts to render to the Legislature.

Mr. Schacht suggested a dilemma if the scenario is supporting the continuance of the current chair for another year and then appointing a vice chair. The scenario of a public owner as chair and private sector representative as vice chair makes sense; however, his personal experience on boards is that the vice chair position is important for whomever the chair will be. If the current chair agrees to continue to serve and the Board agrees, the incoming vice chair should be in line for succession, as it requires some form of sequence within the bylaws. To understand how the process would work, it's important to spend a year as vice chair before advancing to the chair.

Ms. Deakins said the suggestion is similar to the PRC process for chair and vice chair.

Project Review Committee - Information

PRC Chair Curt Gimmestad reported the PRC held meetings in May, June, July, and a special meeting in August at the request of a public entity for project approval for a GC/CM project. The PRC reviewed 11 project applications and two public body certifications. Of the 11 project applications, two were Design-Build (D-B) and two of the GC/CM projects were not approved. One of the GC/CM projects not approved reapplied and obtained project approval during the second submission.

The projects not receiving approval fell within the criteria for RCW 39.10, but planning and understanding of working within the parameters of the RCW and how well personnel within the teams could manage successfully was not convincing to the panel resulting in denial of the application. In one case, the applicant reapplied and was able to demonstrate through consultant assistance, how the entity could meet the requirements.

One project for consideration during the special meeting in August was from the Monroe School District for a GC/CM project. The project was somewhat different because the Monroe School District had started the GC/CM process prior to any approval from the PRC entailing completion of the initial stage of the Request for Proposal (RFP), short listing contractors for GC/CM consideration, and conducting an interview phase. The school district then halted the process prior to issuing the request for general conditions and fee proposal based on the MACC, and developed the PRC application for GC/CM and requested a special meeting in August.

The panel approved the application but not after a thorough discussion about the district's initiation of the process prior to receiving approval by the PRC.

Mr. Thompson asked whether any of the PRC panel members were possibly biased. Mr. Gimmestad replied that no members were biased. However, when the request was initially received for convening the panel for the application, he worked to ensure eight members were represented on the panel to ensure a quorum if one of the members was unable to attend. In that case, the panel included eight members. He initially was scheduled to chair the panel but subsequently recused himself from participating, as his company was one of the firms submitting on the project.

Mr. Schacht asked about the project that was initially disapproved and later approved during the second submittal. Mr. Gimmestad said the project was from the Washougal School District.

Another project disapproved that wasn't resubmitted was the City of Spokane Riverfront Park GC/CM project that included a number of projects bundled into one GC/CM project. The panel wasn't convinced why each project could qualify as a GC/CM project and how each project would be managed by the contractor.

Operating Procedures & Bylaws Committee Report - Information

Chair Maruska said the committee discussed committee representation because of quorum requirements. The bylaws must include the requirement and the committee is drafting language. Committee members also reviewed the officer election process and a recommendation to the Board is pending further work. There are clear conflict of interest elements in the bylaws and the committee is attempting to clarify those issues. However, it's also unknown whether additional provisions should be included to address the antitrust decision. The draft is scheduled for completion following several more committee meetings and review by legal counsel for presentation of a final draft to the Board for its consideration.

Ms. Keith asked about the status of any pending conversations for alternate voting opportunities at the committee level. One of the issues was members not regularly attending and the possibility of appointing an alternate to vote in their absence. Chair Maruska said the issue was deferred to the committee; however, the bylaws do not address the committee level. The current draft includes language that if the representative of an entity is unable to attend a Board meeting, the member could designate a person representing the entity to provide input. However, under the statute, the alternate is not allowed to vote. That action hasn't occurred at the committee level, which would also need to be included.

DES Agency Legislation – Proposed Changes to Small Works Roster/Building Envelope - Information

Bill Frare briefed the Board on the proposed changes to the Small Works Roster legislation and building envelope legislation introduced this year.

DES has worked with stakeholder groups across the state to include both public agencies and the private sector. Stakeholders reviewed small works legislation and the statute, which is essentially one large paragraph and several sentences that are difficult to interpret. The group developed some proposed language for small works legislation as an avenue/venue for small businesses to initiate their entry into public works and to provide a learning opportunity for small companies on how to work with the state through the establishment of credit rating and bonding capacity to enable the companies to bid larger jobs.

Current legislation includes language for limited public works allowing contracting agencies to waive bond requirements or retainage requirements, as well as choosing three small businesses for competing. Through the stakeholder groups, input was received from minority, women-owned and veteran-owned businesses pointing out some of the issues and how competition relates to cash flow and the ability to pay for the cost of

materials pending payment after completion of a job. Additionally, the bonding requirement was also a barrier to effectively compete. Some small businesses working with a set number of contracts do not necessarily have as much overhead as larger businesses creating competition inequities between larger and smaller businesses.

Based on the feedback, some legislation was drafted to raise the limits of both small works and limited public works from \$300,000 for small works up to \$500,000 and increasing \$35,000 for limited public works to \$150,000. The intent is to broaden the range of availability to work with smaller businesses.

Additionally, for small public works, the ability to waive retainage was explored for a project costing up to \$500,000 to enable the public agency to waive the requirement to benefit smaller businesses by enabling payment rather than waiting for project closure. It's also important to have the ability to target small businesses as defined in RCW 39.26 for competition with similar sized businesses rather than small versus large business competition.

In limited public works, the proposal includes the ability to waive retainage and bond requirements. Currently, the agency is allowed to pick three small businesses for limited public works. For smaller contracts up to \$150,000, the proposal would limit selection to mini and micro businesses as defined in RCW 39.26 by further restricting the competition and enabling small contractors to gain entry into the process to begin building bonding capacity and experience working with the state and other contracting agencies.

Lee Newgent asked whether veteran businesses are included in the waiving of bonds and retainage requirements. Mr. Frare said he would need to review the RCW to ascertain if veteran business could be included.

Arlen Harris, DES, reported veteran-owned businesses and well as minority and women-owned businesses are included in the micro and mini business category.

Chair Maruska said some of the issues surrounding smaller ports and cities are the costs of maintaining a public works roster for smaller cost projects. The goal was to use limited public works without maintaining some type of roster while recognizing that many communities have only a few companies that could complete the work. Today, the process requires the hiring of a company located miles away rather than utilizing a local company. He asked about any consideration for addressing those needs for local business.

Mr. Frare responded that the draft language might not include some of those considerations; however, he is willing to work with the Chair on some proposed language.

Chair Maruska said another component is for those public owners waiving the retainage and bonding requirements, to ensure the public owner has the financial capacity to fulfill the waive amounts in the event of labor claims or other claims related to the project. Mr. Frare said the legislation recognizes that public owners are assuming the liability, which is why the draft is a permissive statute rather than an authoritative statute.

Mr. Kuruvilla pointed out the gaps for utilization of minority, women, and veteran-owned businesses by public agencies. Mr. Frare said that the source of that information was used by the stakeholders, which does illustrate that the state is doing a poor job of reaching out to minority, women, and veteran-owned businesses to bring them into the contracting pool. Mr. Kuruvilla asked how the increase in the amounts was determined because the ratio in disparity is more than six times.

Mr. Harris noted the proposal is only a small piece of a larger issue of finding opportunities for small businesses in state contracting. This is just one of the ways that could be viewed as a progressive step.

Another action last year through the support of CPARB was changing Job Order Contracting (JOC) limits. Some anecdotal evidence reveals that some opportunities have been realized by smaller and minority-owned businesses because of the change. The proposal is not the end-all answer but one step in addressing the issues. The \$150,000 limit was based on input from the work of stakeholders who indicated \$35,000 wasn't sufficient to generate income.

Alexis Oliver provided some additional background. OMWBE worked with several stakeholder groups on bonding and waivers. The \$150,000 level for permissive waiving of the performance bond is in sync with the federal Miller Act. Some state agencies have moved forward with the federal government also using that risk level in allowing for permissive waiving of bonding at that level. Several other western states have also moved forward. Many Washington companies are able to compete in other states but not within the state because of the current restrictions. It's often very difficult for small companies to bond with surety companies because of the lack of performance history and character references.

Mr. Crawford said that as an owner representative, he's supportive of option of waiving the bond and retainage as permissive as each owner can evaluate each individual project to determine whether it would be appropriate. While bonding is an issue, the retainage is more of an issue that impacts small businesses greatly. There have been many instances where small businesses had to drop out of a proposal process when they learned how long it would take to receive full payment. That's an important issue.

Chair Maruska added that when the Board worked through reauthorization, the Board received proposals for similar increases in amounts. During that review, some accompanying Labor and Industries (L&I) rules and reporting forms were identified that should also be included in any legislation pertaining to limited public works. He encouraged the group to consider those requirements because they can be a burdensome process for small dollar value projects.

Ms. Keith said the idea from the cities' perspective for enabling more opportunities for streamlining the solicitation process and targeting certain pools are both good principles; however, if the dollar limit is the limiting barrier for many small firms, is the expectation to see an increase in small business utilization. If increasing the dollar limit solves the problem, then it means that more small and minority businesses are participating at the \$300,000 level, which hasn't been the City of Seattle's experience. Those businesses must still compete in the low bid environment. She is also supportive of changing language in the statute because it is difficult to interpret. She asked how the low bid requirement would help solve the under utilization of smaller businesses. If many companies are not utilizing the \$300,000 limit, she questioned how raising it to \$500,000 would make any difference.

Mr. Frare said the current \$300,000 limit includes no provisions for soliciting bids from five small contractors. That provision only exists for projects under \$35,000. Leveling the playing field by selecting five small businesses would move the needle for increasing utilization of smaller businesses. Waiving the bond and retainage requirements will also increase utilization of small and minority-owned businesses. Each of the counter measures to address the contracting issue helps to increase utilization rates. Each one is also an experiment in contracting and the outcome is unknown at this time.

Frank Lemos, President, Washington Minority Business Advisory Council, referred to three disparity studies in the state that reflect how the state is discriminatory in terms of its contracting practices. Those studies include WSDOT's DBE Study completed in 2012/13, Sound Transit's Disparity Study released in 2013, and the Port of Seattle Study released in 2014. All three studies reveal gross discrimination of African-American, Native Indians, Latinos, and Asian-Pacific Islanders. The state must fix the problem because it cannot be ignored or pushed away because of administration costs. The issues are real and the Washington State

Department of Transportation Coalition of Civil Rights is communicating with the Governor. The state is violating Title 6 as agency recipients of federal funds. The three studies show that the agencies receiving federal dollars have an obligation to stop or mitigate discriminatory procedures, practices, or programs that create impacts. The coalition is aware of the state's obligation and the state will begin to experience problems if bodies, such as the Board and agencies fail to address the problems. He congratulated DES and Director Liu's leadership. The proposal is permissive providing options to agencies. The Governor has committed to increase utilization of small business in state contracting. Currently, the state is less than 0.62% of 1% of inclusion in contracting for minority businesses, which is a ridiculous figure. The state should be ashamed that taxpayers in the state are unable to contribute an opportunity in public contracting. Additionally, issues within the national news speak to community riots and other community issues. He suggested that a majority of the issues are directly impacted because of economic disparity. Many young people do not have jobs or examples of successful adults who have assets. The only way to build asset is by purchasing a home. The statistics reveal that is not occurring for minority-owned businesses. A study performed last year by the City of Seattle and UCLA found that minority businesses tend to hire minorities. A minority business owner is likely to hire from the community or family at a rate of 45% of minority employees versus a majority-owned firm hiring less than 4%. The issue is an opportunity for entrepreneurs to create jobs for communities. He asked the Board to support the proposal by an agency that is stepping out and attempting to move the needle. The state has \$35 million contracts to women-owned companies whose husbands are operating those companies. Those companies need to be certified. Even when companies are certified, there are issues. Self-certification doesn't work for the community.

Alan Nygaard referred to the summary of the proposal and pointed out that the language in sections 3 and 4 speak to allowing agencies and local governments to solicit bids from small and veteran businesses or mini or micro businesses. Understanding that all agencies have that ability currently, perhaps the language should indicate that agencies have the ability to solicit from that category. He suggested the draft bill should include that language as it leads to much confusion and it would clarify the intent of either allowing the solicitation or enabling the agency to shrink the pool of participants. Mr. Frare said the intent of the proposal is to remove some barriers and level the playing field. Mr. Nygaard suggested the intent of the proposal is to exclude others and allow permissive solicitation if the public owner chooses, but it would also restrict the pool of how the project is solicited.

Ms. Oliver referred to Ms. Keith's question regarding the small works roster and the appropriate level. She agreed with limiting the small works roster because of legal parity with the Miller Act. Other states comply with performance bond waiving. However, in terms of determining the effectiveness, the federal government was not achieving its utilization target of 24% of small businesses for the Small Business Administration (SBA). Allowing for more opportunities for competing against like companies actually resulted in achieving the target in over a decade in the utilization of small businesses providing some comparative data that can be considered in terms of the SBA achieving its targets by enabling a small pool of competition leading to an increase in opportunities.

Ms. Keith thanked Ms. Oliver for the information. The clarification by Mr. Nygaard also was helpful as increasing the limit could lead to larger firms competing more effectively against smaller businesses. Increasing the limit without changing some of the provisions could lead to that situation.

Bill Kent, Mortenson Construction, supported the proposal, as it appears to be similar to the federal government ADA set asides. However, one of the provisions pertaining to the guarantee of downstream payments is an issue within the industry. In order for general contractors to bid, they must have sub-bids and many subcontractors have the same issue associated with some form of financial guarantees.

Mr. Newgent commented that the conversation has generated some good points that shouldn't be overlooked. However, the provisions addressing the waiving of bonds and retainage would likely have the most substantial impact and shouldn't be overlooked in the threshold amounts. There are a significant number of contracts that are at the \$500,000 level. Certification is an important issue as the industry is seeing a lax in the requirement. The industry would realize a gain if the requirement was intact.

Mr. Harris advised members of the process DES pursues for agency requested legislation. The intent is moving forward with the proposal as presented; however, changes could be considered. The statement of need and the bill draft is scheduled for submittal to the Office of Financial Management (OFM) with the documents returned by mid-November to the agency for approval to move forward to the Legislature. The next CPARB meetings are on November 12 and December 10 and could include time to address questions on the status of the process. DES is requesting the Board consider taking a vote at its December 10 meeting in support of the proposed legislation from DES.

Chair Maruska asked about any opportunities to submit a substitute bill based on feedback offered by the Board. Mr. Harris affirmed the recommendations could be included as the draft moves forward to OFM or when submitted to the Legislature.

Mr. Thompson offered to reach out to the AGC and WAPPA from a heavy civil perspective to obtain some feedback from those organizations for sharing at the November 12 meeting.

Mr. Frare reviewed the proposal for the building envelope. During the last legislative session, HB 1754 for building envelope contractors was introduced for contracts over a million dollars. Currently, specialty contractors are excluded at the time of the bid. Legislation addressed the exclusion as well as including building envelope contractors at the time of the bid. However, his concern is clarity in the language because unlike an electrical contractor, the language is well defined but not so for the building envelope contractor. Another concern is that during the time of the bid if two of the subcontractors were listed and the agency anticipated receiving five, the agency excluded those bids because it was deemed nonresponsive and the agency often received bid protests that delayed the contract. The concern is administrative functionality of the legislation that's lacking in effectiveness.

Subsequently, over the course of the legislative session, the bill was revised in different forms with some designating three or four contractors during the time of the bid or at the time of the award. At the end of the legislative session, Mr. Frare reported he engaged in conversations with Michael Transue and Tonia Sorrell-Neal about the intent of the legislation, which is to prevent bid shopping. At that time, he suggested the Board might be the appropriate venue to discuss proposed legislation to provide feedback on concerns and recommendations.

Michael Transue representing the Masonry Institute of Washington reported that the organization feels the building envelope is an integral part of the building's functionality and constructability and that the initial legislation added the building envelope to the plumbing, electrical, and mechanical trades in terms of no bid shopping. As the bill proceeded through the session, other recommendations were offered that were more acceptable in terms of listing or noting those contractors after the public bid was awarded to avoid issues and concerns that were raised regarding bid shopping and including the fourth piece of building in the bid shopping statute. The organization would like to work with the CPARB on addressing legislation to ensure building envelope is more integral and to increase its level, particularly in the front-end by ensuring contractors are engaged in the process early on to avoid exclusions or substitutions.

Mr. Frare asked to receive a copy of the latest draft bill to include additional information on the organization's intent for circulation to the Board to provide some feedback. Mr. Transue affirmed the request. The organization also submitted information to the Legislature as the bill moved forward. The organization could also provide a presentation on the details of the legislation at the Board's next meeting. Because of the potential energy savings inherent in a building, the building envelope is an important element for increasing awareness.

Mr. Thompson requested clarification on whether the listing pertains to subcontractors rather than a contractor. Chair Maruska confirmed that it is part of the issue, as it should be inclusive of all specialty contractors.

Mr. Transue said the intent was stressed toward the end of the process to reduce the number to a manageable number. Early in the bill process, the number was nearing 25 to 50 building envelope subcontractors within the definition.

Mr. Thompson noted that solving one problem often creates another protest. Allowing an hour or two that is not included within the bid is helpful from the contractor's perspective. Mr. Transue said that the intent centered on how once the bid is awarded by the public entity to the general contractor, the general contractor would have several days to submit the building envelope contractors to avoid that two hour window of bid time.

Ms. Deakins asked whether the two day allowance after the bid is intended to be part of the responsibility criteria of checks. Mr. Transue said it didn't pertain to the responsibility criteria but rather identifying the subcontractor.

Mr. Schacht reported the architects spent time discussing the issue of building envelope subcontractors. The outcome of those discussions recommended against designating the building envelope subcontractors. For architects, there are several issues to address during the Board's discussion. The main issue is understanding why electrical or mechanical subcontractors are designated subcontractors. They are designated primarily because for the most part, a mechanical subcontractor will pick up sheet metal, plumbing, and fire protection as one entity as a subcontractor who packages and coordinates those elements. The same is true of electrical subcontractors who are also responsible for power, lighting, IT, and low voltage, etc. Building envelope contractors are different in that aspect as they seldom include other elements within the bid. Additionally, for hard bid work, architects prefer providing general contractors with some discretion because when they accept the bids they may not be aware of all the exclusions. To the extent that general contractors are locked on bid day or two days following, they have little wiggle room and subsequently have no time to evaluate the different pieces to develop an approach for constructing the project as the contractor proposed in the bid. He acknowledged that it is becoming more difficult to develop building envelopes, as building envelope specialists would indicate that there is a design and inspection piece that would improve performance that might be the easiest way to address the concerns.

Mr. Newgent added that there is the traditional envelope that is involved in the process for properties in the West. Energy conservation is becoming a stronger and an emerging technology resulting in a stronger and inclusive market as a whole. Many systems in the envelope have changed dramatically.

Mr. Transue said the industry has experienced flexibility and elbow room but also has witnessed shoddy construction at the end requiring repairs to newly constructed buildings. Many energy systems are completed at the end of the construction project when chances for substitution and savings are the greatest. Enabling elbow room may result in the project not achieving the original engineered specs. Elbow room must be

tempered with some certainty of achieving the results as planned at the onset and not sacrificed at the back end.

Mr. Schacht questioned whether energy codes and building codes might lead to a new industry of building envelope subcontractors. Based on current industry information, the general contractor might not have the resources to coordinate all the different materials and elements and the envelope and architect consultants might not be aware of the issues. The listing of all subcontractors might not solve the problem. Perhaps the industry should respond differently in terms of how to package the bid.

Mr. Crawford said the first difficulty is defining the building envelop.

Mr. Transue affirmed the information the Board receives includes the definition, which also changed during the legislative process in an attempt to narrow the definition to exclude some elements, such as basements in buildings.

Design-Build Best Practices Committee Report – Information

Mr. Schacht said the committee has met monthly since April. There is strong interest in responding to the identified issues. Stronger participation is desired by architects, engineers, and contractors. Public owners have indicated a willingness to understand what would improve outcomes. Mr. Schacht said he plans to pursue stronger participation in the next month.

The committee discussed the issue of competing for D-B, risks and costs of competition, significant limitation on AECs who would do the work because of the challenges as a small business or minority-owned business, or who might not have the experience to complete the work. The committee also drafted a set of common definitions because of the differences in interpreting industry terminology. The committee has been meeting three hours per session, recording the sessions, and producing transcripts. The committee's goal is to produce a draft for the Board's review at the November meeting to move the process forward quickly because four D-B projects are included in the state capital budget. Those projects could benefit from the committee's work. The State Board for Community and Technical Colleges and two community colleges with D-B performance contracts in the capital budget have participated in the process. It's important not to miss the opportunity to implement best practices to benefit those projects.

Mr. Schacht identified many of the attendees involved in the meetings. There are concerns about the cost of competing and limits on competition. He offered to post the meeting notes and materials from the WSU meetings to members through the online Drop Box. Themes are consistent and some answers would address some issues that could be included within best practices. Some examples include rethinking the scoring criteria to placing less value on whether the contractor and the designer have worked together and more focus on their respective performance record for any procurement type and skills and experience with the project type, and increasing the amount of honorariums that are based on a state fee schedule for schematic design. One of the main issues is the interests conveyed by public owners in the iterative design process and having the full design team and the contractor and important subcontractors at the table to participate in the dialogue about the project. Public owners are also interested in talking to contractors about the opportunity for collaboration while understanding that the process of design competition inhibits innovation and time is not available to take advantage of all the expertise around the table.

Mr. Schacht advised that up to his point, his office has assumed the cost for converting the video to typed transcripts because of the amount of content at a cost of approximately \$1,300, which would double to accommodate future meetings. He asked the Board to consider using some financial resources to fund the cost of converting video to transcripts.

Additionally, the capital budget included the following language, “The Department (DES) with assistance from the Capital Projects Authority (Advisory) Review Board shall provide recommendations to the Governor and House Capital Budget Committee and the Senate Ways and Means Committee on ways to improve project delivery methods. It must include a minimum of methods to incorporate more architectural and engineering firms and contractors to be eligible for Design-Build projects and methods for including high performance criteria with incentives for the architectural and engineering firms and the contractor to meet performance measures in Design-Bid-Build project delivery methods.” The provision is not dated.

Mr. Schacht said he assumes the Board would want to pursue a response to the provision.

Representative Dunshee encouraged the Board to submit ideas. He recently met with officials from WSU about the amount of the budget reduced from its project. One of the items on the cut list was the performance guarantee contract for three years. Long-term performance is critical for buildings and including some legislation would be beneficial. He asked the Board to focus on that issue because the projects previously mentioned could include language in the budget provisos. It’s likely the Legislature will act on something to change the performance contract because of the effect it has on the long-term operation of a building. Currently, 70% to 80% of the cost of a building’s lifespan is in the operation rather than the construction of the building. Many public agencies include those costs within the maintenance budget, which isn’t evident to legislators, as it’s not called out as a separate policy line item. The urgency for the next session is on those issues of how within the WSU example, some flexibility was afforded.

Bob Armstead, National Association of Minority Contractors, said the organization is a national 46-year old association. He’s been in the industry for 35 years and less than 5% of his business has been in Washington State for many reasons, one of which is the underutilization of minority, women, and veteran-owned business participation. An element of that surrounds representation by organizations similar to his association. There are many organizations representing general contractors and architects and until there is representation that focuses on inclusion, all the issues will continue to be addressed except the inclusionary issues. Of all the meetings conducted by the Board as well as the committees, he questioned what organizations are representing women, minority, and small business perspectives on the issues. An AWB project received a non-compliance report for the first time by the Federal Highway Administration because of conditions occurring on the site of the project.

Mr. Schacht acknowledged the comments and indicated participation on the committee is open. He encouraged Mr. Armstead to provide contact information to forward the committee’s meeting schedule. Although membership was assigned by the Board, many others are participating and the discussions have been consensus-based. Ms. Oliver is also participating as a voice for minorities, women, and small businesses, as well as Mr. Kuruvilla. Mr. Schacht said he is also a small business owner.

Data Collection Committee Report – Information

Mr. Nygaard said the proposal is a draft because the committee has encountered some difficulties in meeting to finalize the recommendations.

The draft proposal includes questions that data collection is attempting to answer. To date, much data have been collected for the Board with such a level of detail making the data unusable. The JLARC Study reviewed the data and determined it was not of value. The study recommended revamping the collection effort and identifying how and why the data should be collected.

The committee focused on the following questions:

1. Is the process fair and open to a broad range of businesses in Washington State?
2. Is there a correlation between outreach plans and the level of participation of small Business/DBE businesses?
3. Are there trends in the project reports that could help to drive proposed legislative changes?
4. Are there best practices or training needs that could assist organization in presenting their information?

The recommendations include a phased approach to data collection. During project setup, information would be collected about the project. During the next phase of the project, data would be collected on the names of the firms participating in the solicitations, how many firms participated, and firms awarded contracts. The next phase is data on subcontractor participation followed by a post project team report.

Members discussed whether the same level of information should be collected that is currently collected by L&I. Most members agreed to collect a single source of information and analyze the information as required by the Board.

The Post Project Team Report is the phase offering the project team an opportunity to submit information on best practices and what could be improved. The Board could then review the information and compare for trends and ideas that might be useful for the Board's work in crafting legislation or assisting in preparing for training.

Mr. Nygaard invited feedback for the committee's review and finalization of a recommendation.

Mr. Newgent asked whether the committee discussed the technology for data reporting. Mr. Nygaard said DES has some budget funds to assist the Board in the collection of data. The committee's discussion focused on the type of data to be collected. The best technology for collection of data could then be identified.

Chair Maruska said the old data collection included traditional D-B-B and GC/CM and D-B methods. He asked whether the recommendation only proposes to collect data on alternative public works delivery methods. Mr. Nygaard said members discussed that aspect because D-B-B information is available and inserting the Board within that process could be a burden. Members supported limiting the data collection rather than expanding the collection of data.

Ms. Deakins said that previous data collection on traditional delivery methods was from public agencies utilizing alternative public works methods. Mr. Nygaard added that the JLARC Study termed alternative delivery methods as a standard form of delivery in terms of project deliveries, which may not entail a need for justifying a comparison between the traditional and alternative methods. It may be that the goal is to improve the collection of data to improve alternative public works as opposed to justifying alternative public works.

Chair Maruska added that Job Order Contracting reporting is required by statute. The proposal would be in addition to the annual JOC reports.

Ms. Deakins noted that DES plans to send out a request for JOC data by next month for reporting in February.

Senator Hasegawa said that his desire to be a committee member was to help promote the DBE inclusion within the processes. Data collection is the first step of that process. The operating premise of the committee was determining what data are the most important and ways to encourage reporting. The proposal addresses the question about the correlation between outreach plans and the level of participation of Small Business/DBE businesses and includes a request to submit information on whether the project plan would use a Small

Business/DBE outreach plan. Although the intent was to keep data questions to a minimum, he suggested including a question about whether the plan was effective and whether it worked.

Mr. Kuruvilla asked about the potential of collecting data from subcontractors. The fourth phase of the proposal is geared to prime contractor reporting. It might be possible to include a random sampling of several subcontractors to the general contractor. Mr. Nygaard said the proposal affords participation to the subcontractors who are willing to participate. Many times, by the end of the project, many subcontractors have left the project and are involved in new projects and recruiting their participation is often difficult. The idea as recommended by Mr. Kuruvilla is imbedded in the proposal.

Mr. Thompson pointed out that the statute only requires the contractor to provide the information. Extending that requirement to the subcontractor would likely need to be included in the contract with the subcontractor. Phase 3 addresses subcontractor identification by the prime contractor.

Ms. Oliver suggested that working with associations and organizations might help to increase the number of willing participants, such as the OWMBE or the National Association of Minority Contractors at the time of data collection to increase the level of participation. She offered to work with the committee in those efforts to ensure data collected is statistically sufficient.

Mr. Nygaard noted that one of the reasons for utilizing L&I's data was to work with the contracting community to improve the data collected by L&I as opposed to creating another data collection process.

Mr. Thompson offered to follow up with Mr. Nygaard on the difference between GC/CM and D-B subcontractor selection and how that information is collected.

Mr. Newgent and Representative Dunshee left the meeting. The meeting no longer had a meeting quorum.

The meeting recessed for a break from 11:16 a.m. to 11:23 a.m.

Public Private Partnerships Committee Report – Information

Chair Maruska provided the update. Some draft language is pending from the committee. The committee plans to present some draft language when the draft is completed.

Ms. Keith mentioned the discussion about defining public private partnerships. She expressed interest in learning more about that conversation. Chair Maruska said the discussion focused on developing draft language as the basis of narrowing the discussion. One of the elements of the public private partnership is current state statute and requirements for pursuing public private partnership projects while other public entities are not as restricted in their approach.

2015 Legislative Update – Information

Ms. Deakins reported the final legislative update from this year's session was posted on the CPARB page as a pre-read. Each reference includes a link to each bill for additional information.

She summarized some of the final actions for several bills since the May meeting.

Language was modified for SHB 1070, Joint Utilization Contract, since the May meeting. Not included on the list is the capital budget bill 2EHB 1096 with the language provided on the reverse side of the budget report.

Mr. Nygaard asked about the status of the Board's efforts for the next legislation session based on Senator Dunshee's previous request for language addressing improvements to delivery methods.

Chair Maruska asked Mr. Frare whether DES is drafting some element of the proposal for providing recommendations to the Governor, House Budget Committee, and the Senate Ways and Means Committee, on ways to improve the project delivery methods or whether the CPARB should assume the lead. Mr. Frare said staff has primarily focused on the new budget and projects. No strategy has been developed to implement any proposals. He suggested combining the two efforts (D-B Best Practices and Improvements to Delivery Methods) to avoid duplicative work. However, at this time, he has no specific proposal for the Board to consider.

Mr. Schacht replied that the committee's proposal includes two elements of creating more access for architects, engineers, and contractors that could occur through best practices or potential legislation, as well as high performance buildings criteria for agencies in D-B-B. Architects spent time with Senator Dunshee discussing the issue acknowledging that achieving more high performance buildings can be achieved by D-B, as well as through other tools. Senator Dunshee is interested in incentivizing performance. The challenge is how to incentivize performance in D-B-B because D-B by its nature guarantees performance. That procurement method lends itself to high performance buildings while D-B-B may not. After a quite a bit of research, he still is searching for what an appropriate solution might be for D-B-B, as it's not possible to guarantee outcomes because the contracts are not linked to one contract. He offered to provide a link to a Drop Box folder of all the research for access by the Board.

Mr. Frare said he would review the material and follow up with a phone call to Mr. Schacht to further the discussion.

Mr. Nygaard expressed interest in participating as well.

Budget Update – Information

Ms. Deakins reviewed the Budget Report, which recaps the last biennium budget and actual expenditures compared to the current biennium budget for different line items. Under purchased services in the current biennium, \$30,000 is for allocated for data collection database or website for major projects, as well as the JOC website for online data collection if funding allows. The Board received \$123,000 for the 2015/2017 biennium with the budget allocated by each fiscal year.

Chair Maruska asked whether the budget affords the ability to pay for transcription services for the Design-Build Best Practices Committee. Ms. Deakins noted the budget allocation is limited for that specific line item as the costs for the database and the websites are unknown at this time.

Mr. Frare said that when he first began at DES 18 months ago, he didn't recognize the separate CPARB budget versus the staffing budget. The variance of plus \$93,747 in the CPARB budget is from the first fiscal year that was allocated but not accessed even though expenses were incurred. When the correct line items are segregated for the Board's work, staff time for direct support, and technology systems/data collection the true cost is more than \$270,000 over the biennium. However, moving forward, DES and the Board will work within the established budget with some funding contributed from the DES staffing budget. He asked the Chair to work with him over the next several months to coordinate the budget to ascertain the true costs for the current biennium.

Bill Frare moved, seconded by Andrew Thompson, to approve reimbursement of the transcription costs not exceeding \$3,000 for the Design-Build Best Practices Committee. Motion carried.

Mr. Thompson questioned how the costs are allocated between the different line items for the total biennium of \$123,000. Ms. Deakins noted the allocations are based on estimates. The amount of \$45,948 for Supplies and Materials is based on allotment requests. Mr. Thompson asked about the process for determining whether the Board has a sufficient amount for data collection.

Chair Maruska explained that after the Board determines the data to be collected, the cost to provide the data is the owner's responsibility for inputting the data. However, in terms of DES, any programming for the website or web-based data collection must be procured from other departments within the agency. Previously, some estimates were provided for how much to allocate for that specific line item; however, the Board does not have the true cost from any of the support departments for that service. Previously, the allowance was \$20,000 for technology.

Agenda Items for November Meeting

Agenda items for the November 12 meeting include:

- PRC Report
- Election of Chair and Vice Chair
- Report by Operating Procedures and Bylaws Committee
- Report from D-B Best Practices Committee
- Status Report on by Small Public Works legislation
- Status Report on Building Envelope Public-Private Partnerships Committee
- Action on Data Collection Committee Recommendation
- Discussion on potential Hospital District Legislation and a potential revision of RCW 70 (administrative rules for JOC bidding requirements and restrictions)

Chair Maruska reminded members of the option of transmitting a request via email to include or remove items from the agenda to ensure publication dates are maintained.

Public Comment

Frank Lemos advised the Board of a bill that the community has been working on over the last 18 months increasing the \$35,000 limit to \$150,000 for public agencies waiving the bonding requirement. He asked whether the proposal could be included on the November agenda. Ms. Oliver said the legislation pertains to HB 5912. The effort has received support from the AGC and the Governor's Office.

Chair Maruska said it appears there are several legislative efforts focused on the same outcome. Ms. Oliver said one of the bills addresses the small works and limited works roster and the other pertains to performance bonds and procurement.

There was general agreement by all the parties should work on efforts to align the efforts.

Senator Hasegawa asked whether the legislative bill spreadsheet could include CPARB's position. Ms. Deakins replied that previously, some language submitted by the CPARB has been included in the status of the bills. CPARB did not sponsor any bills in the last session. However, CPARB has not tracked support or non-support of other bills. Chair Maruska said the Board acted on some bills to either support or not support. That information could be included within the spreadsheet.

Adjournment

Bill Frare moved, seconded by Alan Nygaard, to adjourn the meeting at 11:57 a.m. Motion carried unanimously.

Staff & Guests

Nancy Deakins, DES

Danelle Bessett, DES

Aleanna Kondelis, City of Seattle

Tom Gow, Puget Sound Meeting Services

Frank Lemos, WA Minority Bus. Adv. Council

Dick Lutz, Centennial Construction

Bill Kent, DBIA

Kelsey Beck, City of Seattle

Tor Jernudd, AGO

Janet Knoblach, DES

Josh Swenson, IHOF

Bob Armstead, NAMC

Arlen Harris, DES

Michael Transue, Masonry Institute of Washington

Curt Gimmestad, PRC

Robert Maruska, CPARB Chair

Prepared by Valerie L. Gow, Recording Secretary/President

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