

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes - Amended

1500 Jefferson – Presentation Room

Olympia, Washington

November 12, 2015

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

Chair Maruska congratulated new members on their appointment to the Board.

Everyone present provided self-introduction.

Approve Agenda - Action

Chair Maruska recommended moving the elections of Chair and Vice Chair to follow the break.

Lee Newgent moved, seconded by Andrew Thompson, to approve the agenda as amended. Motion carried.

Approve September 10, 2015 Meeting Minutes – Action

The following changes were requested to the minutes:

- On page 8, revise the eighth sentence to reflect, “Currently, the state is less than 0.62% of 1% of ...”
- On page 12, within the first sentence of the fourth paragraph, revise the sentence to state, “Bob Armstead, National Association of Minority Contractors, said the organization is a national 46-year old association.”

Bill Frare moved, seconded by Mike Shinn, to approve the minutes of September 10, 2015 as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Irene Reyes arrived at the meeting and shared information about her company and her industry experience.

Project Review Committee

September Meeting - Information

Curt Gimmestad, Chair, Project Review Committee (PRC), reported that at the last meeting, the PRC considered one GC/CM project application from Dayton Community Hospital. The \$5 million modernization project is located within an occupied hospital. The project team demonstrated knowledge of the GC/CM process. The project conforms to the requirements of a GC/CM project as the facility is occupied during the construction phase and Design-Bid-Build would have been too challenging for the project team because of the phasing plan and the lack of the contractor to assist in facilitating the phasing plan. The project met the requirements for GC/CM under the RCW. PRC members voted unanimously in favor of the project.

Review of Candidate – Action

Nancy Deakins reported one application from Joe Stowell was received for the vacant Owner – Cities representative on the PRC. Mr. Stowell works for the City of Oak Harbor as the City Engineer. He has worked at the City for five years. He also worked with the consultant, Carollo Engineers, to evaluate different delivery methods. Mr. Stowell has been endorsed by the Association of Washington Cities.

Rebecca Keith commented on Mr. Stowell's desire to attend the meeting but because of a previous commitment, was unable to attend. Mr. Stowell believes his experience in working on the City's new water facility project and his insight would benefit the PRC in evaluating future project applications. Mr. Stowell is committed to being involved and participating as an active participant.

Mr. Gimmestad said it appears Mr. Stowell had an opportunity to work on a GC/CM project for the City of Oak Harbor's clean water facility. He asked about the status of references Mr. Stowell provided, as it would be beneficial to receive feedback from those references in terms of Mr. Stowell's expertise and level of experience they feel he would contribute to the PRC. One of the references is a current member of the PRC. He offered to assist staff in following up with the references.

Chair Maruska recommended pursuing contact with the references to ensure the practice of appointing qualified candidates to the PRC continues.

The Board discussed and agreed the practice of contacting references was an important aspect of the vetting process for candidates. Ms. Keith added that Mr. Stowell would be available to attend the next meeting to respond to any questions about his qualifications. Mr. Gimmestad advised that the timeline for appointment is not critical at this time. All panel members for the next meeting have been assigned. Additionally, the position has been vacant for some time. It would be prudent to contact references. He offered to contact the individuals and provide a recommendation to the Board at its next meeting.

Steven Crawford moved, seconded by Lee Newgent, to table appointment action for the Owner-Cities PRC position until the December 10, 2015 meeting. Motion carried unanimously.

Chair Maruska encouraged all Board and PRC members to recruit within their respective organizations potential candidates, as a number of positions will be vacant on the PRC. From the Board's perspective, the PRC is a critical element. The Board relies on the PRC's expertise to review project proposals as outlined in statute.

Walter Schacht asked whether PRC representation is balanced between eastern and western Washington. Mr. Gimmestad replied that the PRC has approximately three members representing eastern Washington.

Chair Maruska emphasized that the Board has strived to ensure a broad geographical representation as well as represented areas of interest on the PRC. Historically, it's been difficult recruiting applicants from eastern Washington.

Ms. Deakins described the recruitment process.

Mr. Gimmestad noted that within the next several months, five terms expire. One position is vacant. Ms. Deakins added that of the two architects positions on the PRC, one member represents eastern Washington. She reviewed PRC positions and current incumbents.

Chair Maruska said that occasionally, a member might change employment. If the incumbent changes employment outside of the industry for which they were appointed to represent, the Board has enabled the individual to complete their respective term if the PRC supports the continuance. One member representing Engineers on the PRC changed employment as a general contractor.

Ato Apiafi said that as a member of the PRC, he represents women and minority firms on that committee.

Ms. Deakins outlined the recruitment and application timeline for Board action in February 2016. Provisions in the PRC By-laws allow members to continue to serve until an appointment or reappointment has been approved.

Santosh Kuruvilla requested transmittal of the recruitment email to all Board members.

Operating Procedures & By-laws Committee Report - Action

Chair Maruska reported on ongoing efforts by the Board and staff in cooperation with Office of the Attorney General (AG) to convert existing operating procedures into by-laws. Earlier meetings included discussions on the rationale for conversion of the procedures to by-laws. A draft of the by-laws was published approximately two months ago with some input received. Changes to the draft by-laws are highlighted.

Ms. Deakins said the AG's office reformatted the document and included a table of contents.

Gary Rowe arrived at the meeting.

Chair Maruska reviewed the proposed changes:

- Article 1, Section 1– Description. Defined by statute
- Article 2, Section 2 – Purpose. Defined by statute
- Article II, Section 1 – Membership. Defined by statute
- Article II, Section 2 – Officers. Added a provision for removal of the chair with a two-thirds vote of the membership. Historically, the Board values a combination of public owner and private sector serving as

Chair and Vice Chair, which has been included as a provision within the by-laws. However, the draft doesn't prescribe chair and vice chair membership as public or private with the Board having the option to select whether the Chair is a public or private member. After selection of the Chair, the Vice Chair would automatically represent private or public sector dependent upon the Chair's representation. The election is on a two-year cycle to match the Legislature because of timing for bills, which can be carried over from one session to another session. Chair and Vice Chair elections are scheduled in May 2016 after the end of the legislative session. The by-laws include several provisions addressing vacancies of the Chair or Vice Chair.

- Article III Meetings. Defined by statute.
 - Section 1 Meeting Schedules
 - Section 2 Meeting Attendance. Clarifying language was included for meeting attendance because many members are appointed by the Governor. The provision clarifies that the Chair would ask the Governor or the appropriate appointing body to remove any member who misses more than two meetings in any calendar year without cause and request appointment of a new representative if appropriate.
 - Section 2 Stakeholder Representation in the absence of Board Member. Additional language was included addressing attendance by an alternative. If a member is unable to attend a Board meeting and wants to designate someone to represent their interests on their behalf, the proposal would allow such action if the member notifies the Chair and staff in advance of the meeting. During the meeting, the alternate would be identified and acknowledged as a representative but would not be allowed to vote as stipulated under the statute.
 - Section 5 Meeting Agendas. Additional language provides clarification pertaining to the agenda. Additionally, because of the Open Public Meetings Act (OPMA), language was included stipulating no agenda items may be added to special meetings.
 - Section 6 Public Comment during Meetings. Additional language clarifies that the current statute doesn't required the public attending a meeting to identify themselves when providing public comment.
- Article V Amendment of By-laws
 - Section 1 Amendment Procedures. The provision requires an affirmative vote of 12 or more of the 19 eligible voting members for amendments to the by-laws.
- Article VII Committees
 - Section 1 The Project Review Committee. A new provision requires the PRC committee procedures and by-laws to incorporate a conflict of interest and recusal policy that complies with all federal and state requirements and that inspires the public trust. Andrew Thompson questioned the approval authority of any changes to the PRC by-laws. Chair Maruska recommended specifying that the Board is the approval authority for changes to PRC by-laws.
 - Section 6 Committee Meeting Attendance. Language was added clarifying that all committees other than the PRC may adopt rules that permit committee members to send an informed substitute to sit in for discussion and/or to act on behalf of the committee member's stakeholders with prior notice to the committee chair.
 - Section 8 Committee Meeting Minutes. Language was added for the production and publication of committee meeting minutes.

Chair Maruska invited comments and feedback on the proposed draft of the by-laws.

Alan Nygaard inquired about the responsibility for preparing and posting committee meeting minutes. He asked whether the Department plans to provide resources for the preparation and publication of committee minutes. Ms. Deakins offered that it would be the chair's responsibility for ensuring proper minutes are

produced. Mr. Nygaard recommended including language outlining the chair's responsibilities as the level of minute-taking at the committee level could be substantial.

Discussion ensued on the professional service for minutes for the PRC and the Board through the Department of Enterprise Services. Chair Maruska said a similar discussion occurred during the meetings of the Design/Build Best Practices Committee chaired by Mr. Schacht. The Board approved assistance for preparation of the minutes.

Mr. Schacht said the committee utilized WebEx for meetings. All meetings were recorded. The Board approved hiring a professional transcriptionist for a three-hour meeting resulting in 44 typed pages. Since the production was not professionally produced similar to the service provided to the Board, not all comments were correctly matched to the speaker. Minutes from the CPARB meetings are representative of the conversations occurring during the meetings rather than verbatim minutes. Audio recordings are available for the committee meetings; however, he's unsure whether the transcription satisfies the intent of producing minutes for the committee meetings.

Mr. Nygaard recommended including language identifying the resources for producing and publicizing the minutes. Audio recordings do not meet the conditions outlined in the by-laws.

Mr. Frare recommended including language identifying CPARB as the responsible entity for providing the resources to PRC for the production and publication of minutes. In terms of other committee meetings, some committees only meet once while others are ongoing committees entailing many meetings that could have substantial impact to the industry based on its recommendations. Language could be inserted stating, "On the request of the chair and approval by CPARB, resources would be provided to accommodate note-taking and recording of minutes."

Members discussed approval of the minutes. It was clarified that the meeting body is responsible for approval of its meeting minutes. After approval, the minutes are publicized.

Chair Maruska requested clarification as to the suggested changes to the draft. Mr. Frare recommended adding two sentences with the first following the first sentence stating that the CPARB would provide professional minutes of PRC meetings. The second sentence would be at the end of the paragraph stating that the committee chair shall request appropriate resources for the production and publication of minutes from the CPARB.

Ms. Keith supported language stipulating that resources be provided to the PRC because it's important for those meetings to have a transcript of the proceedings. She questioned the level of detail required for committee meetings to comply with OPMA and other state requirements. For example, the level of detail could result in substantial resources and cost, which might be unnecessary for some committee meetings. The committee's actions and attendance are important to capture rather than every person's comment. Chair Maruska referred to similar discussion several years for the CPARB minutes. At that time, the AG clarified that the OPMA requires certain elements to be included in minutes. The committee could elect to record meetings but there is also a minimum written requirement for minutes under the OPMA. In terms of the notes for the Design/Build Best Practices Committee meetings, some value was added in capturing the discussions rather than a requirement under the OPMA to utilize that technique.

Mr. Schacht said at some point, the committee likely would transition its meeting minutes. The intent was to document the dialogue during the meetings as it could result in potential legislation. It was important to

capture the comments. Once a recommendation is drafted, the committee could abandon transcription of the meetings.

Mr. Thompson recommended including language that clarifies minutes of the PRC meeting would be available prior to the next CPARB meeting. Chair Maruska disagreed, as it should reflect that the minutes would be available for review by the committee prior to the next PRC meeting. Mr. Rowe said he believes the service provider would provide the minutes to the PRC for review and approval prior to publication. Ms. Deakins offered to include language clarifying that the minutes are approved by the PRC rather than CPARB.

Ms. Deakins spoke to a preference to have committees provide summary minutes rather than detailed minutes because of the timeline to produce minutes. She cited the example as provided by Mr. Gimmestad during his PRC report as a set of summarized minutes committees could produce. It's difficult to satisfy requests to receive committee minutes when the minutes haven't been publicized.

Frank Lemos, Washington Minority Business Advisory Council, spoke to his attendance to CPARB meetings. It's often very difficult for the community to understand what occurs at committee meetings without thorough meeting notes. He's appreciative of the undertaking, but pointed out that state law prevails and that it's important for the Board to understand that what it does is very important and affects contractors. The only way for many to remain updated is through video, audio, or written notes. It's important to provide timely records to the public.

Chair Maruska referred to the section on vacancies of officer positions and feedback on language that should the Chair position become vacant, the Vice Chair fills the position.

Mr. Frare recommended simplifying the language by indicating that if the Chair or Vice Chair positions become vacant, the Board meets and elects a person to fill the seat for the remaining term of office. Moving the Vice Chair to the Chair is somewhat cumbersome and may not be appropriate especially if the Board is striving to ensure appropriate coverage between private and public bodies.

Mark Riker added that there is nothing precluding the Vice Chair from seeking the position of Chair, which could trigger two elections.

Mr. Crawford supported existing language in the second paragraph including the potential for the vice chair to assume the chair position immediately if the vacancy occurs mid-term or a long period before the next meeting to ensure the operation of the Board continues. The provision provides for a succession process whereby the vice chair becomes familiar with the operation of the position of the chair.

Mr. Frare agreed with the provision to afford the vice chair an opportunity to assume the chair position when the position is vacated to afford time to coordinate Board actions prior to the next meeting. However, he doesn't agree with the second provision whereby the vice chair automatically assumes the chair position for the remainder of the term.

Ms. Deakins noted the duties of the vice chair as stated in the draft language allow the vice chair to assist the chair as appropriate, and perform all duties normally performed by the chair in his or her absence.

Chair Maruska cautioned against including conflicting language under the vacancy provision that would impact the duties of the vice chair. He suggested editing the vacancy language stipulating that should the chair position become vacant, the vice chair would assume the position of chair until the CPARB has an opportunity to elect the new chair.

Mr. Frare said existing language in the draft isn't necessarily in conflict as the duties of the vice chair indicate that the vice chair shall perform the duties of the chair in the absence of the chair. At the next meeting, the CPARB would conduct an election for the chair position.

Mr. Newgent commented that the process for re-electing the new chair wouldn't likely occur at the next meeting. Most members have experience sitting on boards and committees and should a vacancy occur between meetings, most members would be unaware. He suggested inserting language that an election would occur at a future meeting and affording the vice chair, who is likely more familiar with the CPARB process, to assume the chair positions for several meetings as needed without specifying a time limit.

Members discussed and exchanged opinions on the two draft provisions for vacancy of officer positions.

Ms. Keith recommended retaining the second provision and eliminating, "until the next regularly scheduled election."

Mr. Crawford said the second provision prescribes that if the chair position becomes vacant, the vice chair shall assume the position of chair and serve the remainder of the term followed by a second provision that the Board shall elect a new vice chair to serve until the next regularly scheduled election. Those are two different provisions and should solve the issue.

Mr. Schacht suggested that if the Board must choose one of the provisions, it should be the second provision because the reason for the vice chair is to provide a solution should a circumstance occur. Meanwhile if the Board discovers that the vice chair is not a viable chair, the Board retains the mechanism of electing a new chair.

Mr. Crawford suggested language in *Section 6 Public Comment during Meetings*, of not requiring members of the public to identify themselves during comments is contrary to the spirit of the OPMA. Chair Maruska said the AG's Office provided guidance that no citizen is required to provide identification when offering a comment during public comments.

Robert Maruska moved, seconded by Steve Crawford, to approve the Vacancy provision stating:

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

Mr. Thompson asked for feedback from Ms. Keith on her preference for a non-prescriptive provision. Ms. Keith said she prefers for the Board to have the ability to use either option; however, in the event there are only several meetings left, the vice chair would continue to serve as chair until an election is held. The provision gives the Board the option of having the vice chair serve as chair until the next term.

Chair Maruska suggested considering a friendly amendment to change "shall" to "may" to address Ms. Keith's concern. Ms. Keith preferred not changing the language at this point.

Mr. Rowe supported retaining "shall," as it's important not to conduct a meeting without a vice chair to assume the duties of the chair. Mr. Thompson agreed with retaining "shall."

Motion carried. Bill Frare, Mark Riker, and Rebecca Keith opposed.

Bill Frare moved, seconded by Lee Newgent, to adopt the CPARB By-laws as amended. Motion carried unanimously.

Building Envelope Legislation Discussion – Information

Mr. Frare referred to Engrossed Substitute House Bill 1754. The proponents of the bill support protection from bid shopping for building envelope contractors. Opponents of the bill were concerned that it created too much ambiguity into the bidding process and that contracting agencies would ultimately end up with bid protests because it was unclear as to which contractors wouldn't be listed on the bid documents or immediately thereafter creating the opportunity for bid protests. When the bill did not pass, he contacted bill proponents to obtain their feedback. The proponents want to vet legislation through the CPARB and address concerns with the Board.

Chair Maruska asked whether Senator Hasegawa was interested in the bill. Mr. Frare said Representative Buys was the sponsor in addition to other legislators to include Representative Dunshee.

Mr. Newgent commented that one of the conversations centered on concerns around grouping building construction systems similar to electrical and mechanical packages. Currently, the industry is able to submit plans for an exterior façade and during the time of construction, it's possible to switch to a different system. That is occurring more frequently, especially as part of the green construction and thermal protection of the outside core. It is a viable conversation because in the future, the building envelope would be packaged similar to electrical and mechanical.

Chair Maruska remarked that from a public owner's perspective, there were concerns dependent upon the type of construction because subcontractors in the envelope could vary widely and the owner wouldn't have the opportunity to know which subcontractor would be used for a specific building envelope. He asked whether the conversations addressed those concerns. Mr. Newgent said the discussion covered those issues because of the number of crafts and different contractors that perform that type of work. However, there were also issues surrounding the new energy standards that utilize building systems, which are then replaced outside the original bid. There is no automatic fix for those situations; however, based on historical bid packages for mechanical and electrical, some resolution is possible in the long-term.

Mr. Riker offered to speak to those advocating for the legislation. Sheet metal contractors encounter situations continually. He expressed interest in developing some legislation that addresses concerns. Mr. Newgent agreed additional conversations are warranted on the proposal.

Mr. Crawford noted building envelopes are becoming more important to legislators in terms of meeting energy standards. As a public owner, it's beneficial to consolidate smaller trades into one larger area of responsibility that might lead to a better quality outcome. Standard practices today result in no building envelope subcontractors overseeing the entire process. According to existing language in Section 1, paragraph 2, the general contractor must list all names of subcontractors who would be involved in the envelope, which would be extremely difficult to satisfy while not overlooking some subcontractor who is contracted by another subcontractor.

Mr. Schacht said he received correspondence from the Executive Director of the Washington State Masonry Contractors, which initially supported the legislation. The masonry industry is not interested in pursuing the legislation and has withdrawn its support. When the Washington Architects Association was originally approached to support the legislation, it was through the masonry contractors. He suggested an alternative of

establishing a building envelop commissioning, which is employed in the City of Seattle as part of the permit submittal and required field inspection to achieve better outcomes without changing standard industry practice

Bob Armstead, National Association of Minority Contractors, remarked that any legislation that promotes expediency is viewed favorably by the association. There is a definite benefit for the association's contractors to include the requirement to list all subcontractors and utilize those subcontractors.

Larry Steven, representing mechanical and electrical contractors, said he wasn't prepared to speak to the issue but acknowledged that there have been concerns from his clients about the proposed bill. He is willing to participate in any discussion surrounding the issue.

Jerry Vanderwood, AGC, stated that the Association strongly opposed the legislation and is willing to discuss the proposal.

Mr. Thompson commented on a number of interests may want the Board to include specific subcontractor identification requirements when the low responsible bidder is determined if this legislation is adopted.

Mr. Nygaard asked whether the proposal is to pursue an analysis or to render a recommendation on the legislation. Mr. Frare said the introduction of the bill was an attempt to provide an opportunity for a discussion on the issues and affording access to proponents to provide feedback to the Board on the bill. He is not an advocate for the bill but wanted to provide an opportunity for others to address concerns about the bill.

Mr. Newgent expressed appreciation to Mr. Frare for bringing the matter forward. It's also important to know that the bill was pursued legislatively during the last session and it could likely be revisited during the next session.

Ms. Deakins apologized for the lack of including other pre-reads depicting legislative hearing comments and a diagram highlighting how energy escapes a building envelope. The material was received from Michael Transue, representing the Masonry Institute of Washington. It appears that Mr. Transue approached the CPARB several months ago about the legislation. Mr. Transue was unable to attend the CPARB meeting to provide additional comments. She offered to post the information on the CPARB webpage.

Chair Maruska recommended having the proponents of the bill request the CPARB include the issue on the next meeting agenda.

Mr. Frare offered to provide building envelope proponent contact information to all Board members.

Joaquin Hernandez pointed out that language within subparagraph 2 doesn't necessarily require the public agency to declare the contract void. The language is permissive compared to the first paragraph where it would be deemed nonresponsive if the prime contractor did not submit the names of subcontractors.

Mr. Crawford said the legislation doesn't limit the ability of others to protest the bid because of the failure to list subcontractors in a system that includes many different entities.

Mr. Hernandez offered that protests would occur regardless of whether it's justified. If the agency receives a protest from a disgruntled party and the prime listed the subcontractor, the agency would be well within its rights not to declare the bid void.

Brent LeVander noted that some state entities already include the submission within the bid documents. He's unsure why the Board would attempt to legislate for all state bodies the requirement to list all subcontractors.

Mr. Schacht said his question pertains to the recognition that in terms of mechanical and electrical packages, the public agency requests the listing of the prime subcontractor. That's not a legislative requirement, but an agency decision to require the information. Several members replied that the requirement is included in the RCW for public works projects over \$1 million.

Members deferred further discussion.

Public-Private Partnerships Committee Report – Information

Mr. Ahlers joined the meeting via telephone.

Mr. Ahlers reported that the committee is currently at the stage of drafting legislative language. Input was received from all committee members and the draft has been revised accordingly. The committee is working on a consensus basis. The next meeting is scheduled on November 19. By early January, the committee is scheduled to complete a draft of the statute to present to the Board for review and feedback. He invited the Board to contact him to receive information on future committee meetings.

Mr. Ahlers advised that the review was at the request of the industry to consider a public-private partnership statute allowing more flexibility for transportation projects and other public works projects that would qualify for that specific type of delivery method. The committee is comprised of approximately 30 members who have provided input and represent public owners, contractors, subcontractors, minority subcontractors, and labor. Others are encouraged to attend and participate

Senator Hasegawa arrived at the meeting.

Chair Maruska recessed the meeting from 10:50 a.m. to 11:01 a.m. for a break.

DES Agency Legislation – Proposed Changes to Small Works Roster – Action

Mr. Frare provided a brief overview on the purpose of the legislation for changes to the Small Works Roster. The proposal addresses concerns from the minority community on the inability to effectively compete for projects. Some of the input impeding competition is cash flow and credit, specifically relating to bond requirements. Smaller firms generally do not have the credit history to secure bonds at the same rate as an established firm. New businesses generally pay a higher cost to enter the market than an established firm. Another issue is cash flow in terms of retainage. Small firms must be able to purchase the materials and pay for labor prior to receiving reimbursement for the project, which can be problematic for small companies that may not have access to credit.

During a recent minority business summit, information was presented on home ownership and how 68% to 70% of all white families own their home while in the minority community, home ownership is substantially lower at 35% to 38% of African American families owning their homes. Obtaining credit for short term loans to purchase material and meet payroll is often not possible because credit companies use home ownership as collateral. If collateral isn't available to a minority business, then that company is paying a higher rate of return on the credit. Those are the issues serving as the foundation for the proposed bill.

The proposal increases small public works and limited public works limits for the expedited process of the Small Works Roster. The proposal increases the amount from \$35,000 to \$150,000 in limited and from \$300,000 to \$500,000 for small works. For limited public works, the proposal allows a contracting agency to

assume the risk and waive the requirements for retainage and performance bonds to help level the playing field for minority businesses. The bills enable contracting agencies to target micro and mini businesses for smaller dollar value projects. For small public works, the proposal doesn't waive bonds for the higher threshold but does enable waiving of the retainage requirement. Previous language allowed for targeting small businesses, which was retained in the proposal.

The proposed bill increases limits and authorizes solicitation from small veteran, micro, and mini businesses and allows the waiving of retainage bond limits. The request is endorsement of the proposed bill for introduction during the 2016 legislative session. Members were asked to share concerns or issues about the proposal or any unanticipated consequences that haven't been considered for additional discussion to help mitigate any issues prior to the Board's consideration of the proposal at its December 10 meeting.

Chair Maruska asked about the status of the bill. Mr. Frare said the status is a request from DES to the Governor's Office on the proposed legislation. No sponsor has been contacted pending the Governor's concurrence to move forward.

Mr. Newgent asked about the timing of the last update of project threshold amounts. Mr. Frare said he believes the last update was in 2012. It was increased from \$25,000 to \$35,000 in limited public works. He is uncertain about the amount of increase for small public works.

Chair Maruska added that CPARB worked extensively on prior legislation to incrementally change the amount. Mr. Newgent asked whether retainage was discussed during the last round of legislation. Chair Maruska recollected that some concerns were expressed by Boardmembers that one of the primary advantages of retainage was protection of workers and payment. Retainage guarantees that workers wouldn't assume the burden of not receiving wages and funds would be available through retainage to pay workers. At that time, the Board did not support moving forward with a change to the retainage requirement.

Mr. Newgent shared that the City of Seattle has supported small businesses by fast-tracking payment as well as supporting discussions surrounding retainage and other measures that make it easier for contractors to build their capacity. However, the City is concerned about the dollar amounts and the experiences with prosecutions of building trades because of fraud through the lower threshold amount when contracts were lumped to limit the threshold ceiling. [Clarification December 2015] The City supports measures to help small contractors become more effective through quicker payment, retainage, and bonds. In terms of the threshold amounts, more discussion is warranted.

Mr. Riker asked about the impact of the last increase and whether legislation achieved the goal to increase participation. He asked about the criteria for waiving the requirements for retainage for both limited and small public works. Additionally, if an issue arises with the non-payment of wages, he questioned how that situation would be resolved.

Mr. Crawford noted that the proposal language doesn't change the requirements for prevailing wages and affidavits. It appears that process would not be affected. Mr. Frare said he discussed the proposal with representatives from the Department of Labor and Industries (L&I). L&I expressed some concerns about the retainage portion of the contract, which L&I views as a "hammer" to enforce compliance over the course of the contract to secure affidavits and intents. Waiving the requirements created some concerns that L&I would not be able to force compliance with the requirements. L&I considered a three-tiered approach with the subcontractor as the first responsible party for providing the affidavits and intents and certifying payroll at the end. If compliance is not achieved through the subcontractor, L&I contacts the prime contractor. If compliance is not achieved from the prime contractor, L&I contacts the contracting agency to achieve

compliance. That three-tiered process is already in place. The proposal would essentially assign the bulk of the responsibility to the contracting agency. When the contracting agency decides to advertise a small works or limited works contract, they would need to examine internal resources to assume the risk that the contract might not be completed by waiving the bond or assuming the risk in the event there is a labor dispute or a lien by a supplier.

Mr. Riker commented that the proposal essentially doesn't change the current process except for the retainage for unpaid wages. If there is no retainage, certified payroll records are submitted weekly and often it's discovered that the retainage was paid and there is no way to make the worker whole. That situation is unacceptable. He questioned what provisions are in place in lieu of retainage. Mr. Crawford said it speaks to the responsibility of the public agency and how it's important for public agencies to be discretionary in how they would apply those opportunities.

Chair Maruska clarified that the statute was amended in 2009 increasing the amount from \$200,000 to \$300,000 with no changes to limited public works or the intermediate amount. Today, the value of \$35,000 is so small that it's been difficult to utilize. Additionally, from the Port's perspective, if the limit was higher, the Port could contract more limited public works and utilize the opportunities the law allows.

Mr. Apiafi said he represents the National Coalition of Minority Contractors (NAMC). He asked whether the proposal applies to professional consultants. Mr. Frare advised that the proposal is not applicable to consultants for professional services.

Mr. Riker asked whether a public agency encountering a wage violation could issue a notice of violation and bar the company from future bids.

Mr. Frare said the bill requires DES to lead an effort to develop rules for the application of small and limited public works to provide more structure at the WAC level rather than the statutory level. Once passage of the bill occurs, DES plans to work in conjunction with the Municipal Resources Services Center to draft rules.

Linneth Riley-Hall, Sound Transit, recommended the committee review legislation changed last year for transportation projects where retainage is not allowed. The performance bond includes language to protect workers.

Chair Maruska added that the change in retainage for transportation projects was because of federal funding requirements prohibiting retainage. Mr. Riley-Hall offered to share the information with Mr. Riker.

Larry Stevens suggested not taking action on the proposal until concerns are discussed.

Mr. Thompson questioned the legality of soliciting proposals from targeted small businesses. Mr. Frare said the law currently allows soliciting and awarding contracts for limited public works through the creation of rosters.

Chair Maruska explained the current statute that includes flexibility to develop rosters.

Mr. Horn commented that the proposal would likely reduce costs, as more small businesses participating in bids would likely increase competition. Bonds cost 2% to 3% of the project cost, which is a direct cost to the contractor. As a direct cost, the contractor should be able to present the bill to the public entity and receive reimbursement for the cost of the bond. This is a bill for small business. Currently, many businesses can't bid

because of the inability to secure a bond. He supports the proposal, as it's one of the best pieces of legislation he's seen with respect to assistance for small companies.

Mr. Newgent suggested that since so many issues have been identified it would be prudent to pursue follow up and delay any action.

Mr. Riker said he spoke to Mr. Frare prior to the meeting and asked for the opportunity to spend additional time on the proposal prior to CPARB's action.

Mr. Lemos said his organization supports the legislation acknowledging that pitting the community against itself and distorting the issue surrounding the issue of payment could likely be addressed by considering some sort of penalty. Specifically, the \$35,000 threshold matches the federal Miller Act that has been increased to \$150,000. Inflation alone since 1982 would increase the amount to \$90,000. He understands the concerns and that the Board will be working on the proposal over the next four weeks as the issues are legitimate questions and concerns. The proposal doesn't mandate public bodies. Three state disparity studies have proven inequity based on race. The minority business community is struggling and can't compete at the same level. The request is not asking for a lower bar, but minority companies struggle with assets and credit. In particular, the organization is very focused on limited public works.

Teresa Berntsen said OMWBE also supports the legislation realizing that the Board's dialogue is important in terms of potential unintended consequences; however, the organization supports the opportunity and being part of the dialogue and the efforts by DES.

Mr. Shinn asked about other input from other public owners. Chair Maruska said public owners have for a number of years advocated for increasing the limits on small works roster and understand the concerns of all parties. They worked together to produce a proposal several years ago to increase the amount to \$500,000. Some compromises occurred. Increasing the flexibility to the public owner affords more tools in the tool box leading to better service to the public and to the contracting community. The general opinion is that public owners support changes to small works.

Mr. Shinn said he understands the comments but spoke to his experience as a contractor for many years and dealing with minority subcontractors. The biggest problem in the state is in the structure of being a designated minority contractor. To become a mechanical minority subcontractor today, a person must prove experience as a plumber or pipe fitter and not business experience; otherwise, the company cannot receive a license.

Ms. said many individuals complaining that they cannot obtain certification are not in compliance with the certification process. Many complain constantly. There are reasons many companies never receive certification either because they are a front company because another larger contractor advised the individual to apply as a minority company with the contractor's support or because many small minority companies want only a sliver rather than a slice of the pie.

Mr. Crawford said that school districts in general support the proposal if it remains as a permissive process.

Mr. Apiafi referred to John F. Kennedy's words of a rising tide leads small boats and by supporting small businesses, the state benefits in time. His concern as an architect is that the proposal is only for contractors. He asked for consideration to include consultants as many can use the help. Minority consultant firms are facing similar challenges and would appreciate inclusion.

Mr. Armstead said that the state in producing its own record reflects that all minorities in the state complete less than ½ of 1% of all business in the state. Approximately 99.5% of all state dollars are spent on non-minority firms. The current practice is not working. Everybody in the state should be embarrassed with those kinds of statistics. Those are the state's statistics not private company statistics. The threshold of \$35,000 in today's economy would not begin to cover the cost of materials and equipment just to mobilize for a project. Having a cap of \$35,000 with an expectation that all smaller businesses could function in that type of environment and increase the level of participation beyond the ½ of 1% doesn't compute. He encouraged everyone with ideas to share that information to help improve the proposal.

Chair Maruska recommended deferring any action and affording more time on the December agenda to discuss the proposal. Mr. Frare agreed and affirmed his intent to speak with members representing different trades and organizations. He extended an invitation to everyone interested in the proposal to meet with him over the next several weeks to iron out issues.

Mr. Hernandez and Alan Nygaard expressed interest in meeting with Mr. Frare.

Lee Newgent left the meeting.

Other Proposed Legislation – Hospital Districts Legislation – Information

Ty Heim referred to previous Board discussions on the potential extension of Job Order Contracting (JOC) to Public Hospital Districts. A public hospitals district RCW includes a clause that limits hospital districts in accepting bids only at estimate or below. He introduced Ben Lindekugel, Executive Director of the Association of Washington Public Hospital Districts.

Mr. Lindekugel briefed the Board on background information surrounding the effort and how legislation would assist public hospital districts. Currently, the state is home to 58 public hospital districts covering more than two-thirds of the state. Most hospital districts are rural hospital districts. Hospitals require specialized construction and have unique needs. The Board is asked to support the proposal and take some time to review the proposal. Public hospital districts are the only public entity in the state that must rebid a bid that exceeds the engineer's estimate. He cited an example of a hospital in Port Angeles that had to reissue a bid after the original bids exceeded the estimate. Three months later, the hospital ended up with higher low bid that was higher than the first low bid, as well as less product costing the community approximately \$176,000.

In Port Townsend, the hospital is in process of a major remodel of \$20 million. Bids received were slightly more than the estimate requiring the hospital to spend several hundred thousand dollars on additional design and bid documents. The Public Hospital Districts is seeking CPARB assistance to strike some existing language in statute.

A second issue is JOC. Hospitals typically require unique construction. Many hospitals in the state were built in the 1940s and 1950s and need new construction and renovation, requiring different types of construction. Public Hospital Districts would like to be added to the list allowing entities to use JOC.

Mr. Heim said hospitals often contend with practice changes mandated by the medical community requiring additional capabilities. Many of the improvements involve a quick turnaround and JOC would assist hospitals with those types of projects. Recent legislative changes by the federal government dictated changes in hospital billing and business relationships with various entities. Legislation was released on a Thursday, enacted on a Monday, with compliancy required by January 1.

Mr. Lindekugel said the request is for the Board to support and advance both changes in legislation. In many communities, public hospital districts are typically the largest business/employer in the community, and in some cases, within the entire county. Offering services makes a big difference. Rural healthcare places more demands on hospitals because of insufficient revenue.

Chair Maruska clarified the bid issue. Mr. Lindekugel affirmed that public hospital districts are the only entity affected by statute. Mr. Heim said the request before the Board is for public hospital districts to fall under RCW 39 similar to other public agencies.

Mr. Schacht agreed the proposal is reasonable. He asked why the constraint was introduced in statute originally. Mr. Lindekugel said he researched the issue with no luck and is unsure as to why the restriction was included.

Chair Maruska asked whether CPARB is also requested to sponsor a bill or only endorse a bill. Mr. Lindekugel said the request is to advance the bill as bill by the Board.

Mr. Riker asked why public hospital districts were not included in JOC legislation. Chair Maruska said JOC requires a certain skill set as the dollars are negotiated and the Board wanted to ensure that public owners utilizing JOC had the skill to negotiate the work. As the Board has worked through legislation, utility districts with a threshold of specific sales were included. The Board has received some complaints about what some hospital districts are doing in smaller communities because they lack the sophistication and many hire consultants but disregard the advice and pursue a different path. Some consideration should be afforded for a JOC project to ensure the hospital is sufficiently sophisticated in the use of a book because much of the work is not competitively bid costing the public money.

Mr. Lindekugel said some rural hospitals are sophisticated and perhaps limiting the legislation to some lacking sophistication might be logical. However, the greatest difference in operating margins typically is with the smallest entities requiring a longer term conversation about how to assist those hospitals in gaining the necessary expertise rather than excluding them from the process.

Dick Lutz, Centennial Contractors, said he learned that The Evergreen State College was not listed for JOC even through an interlocal agreement. The law precluded the college from participating. The same could be applied to smaller entities that couldn't use an interlocal agreement to participate in JOC even though a larger entity may have the ability to use JOC. In this case, smaller hospitals might be able to use a JOC contract through an interlocal agreement with a larger entity while also gaining some necessary expertise.

Chair Maruska said the challenge is drafting language to allow those circumstances. He agreed to include the proposal on the December meeting agenda.

Chair/Vice Chair Elections – Action

Chair Maruska requested the Board's consideration to fill the vacant Vice Chair position. Interested members should be representative of private industry as he serves as the public body representative as Chair. His term of office expires in May and he doesn't plan to seek reelection in May.

Chair Maruska opened nominations from the floor for the term of Vice Chair until May 2016.

Mr. Nygaard offered a nomination of Andrew Thompson who has served on a number of committees and has been engaged in CPARB for many years. Mr. Thompson accepted the nomination and expressed appreciation for the nomination. Mr. Kuruvilla seconded the nomination.

Senator Hasegawa asked about the process to toggle officer positions between public and private sector representatives. Chair Maruska affirmed that during the earlier by-laws discussion, the Board approved the Chair and Vice Chair representing public and private sectors with a two-year term of office. However, nothing in the by-laws dictates which position is represented by a public or private sector member. The May Chair election could include election of a member representing the private sector.

By affirmation, the Board elected Andrew Thompson as Vice Chair.

Design-Build Best Practices Committee Report – Information

Mr. Schacht reported the committee met in October and discussed post award aspects of Design-Build. A draft for discussion purposes will be presented to the committee to discuss establishing some initial best practices. The committee is dealing with a substantial amount of information necessitating reviews by section. At its next meeting, the committee plans to discuss terminology as many members speak English, French, and other languages creating some difficulties in attaining consensus on issues. Following that discussion, the committee plans to clarify the different formats for procurement and then discuss potential strategies for creating more opportunities for architects, engineers, and contractors to participate in Design-Build competition.

Charles Horn and Irene Reyes left the meeting.

The committee plans to spend the next three months working on developing a baseline draft of the report. Mr. Schacht suggested releasing segments of the report to the Board and to the public as the committee's review progresses. Opportunities for success appear good. In a recent article he authored in the Seattle Daily Journal Commerce, he reported on the CPARB committee and the willingness of public owners to engage in a discussion about proven outcomes. He invited feedback from members.

Ms. Deakins shared her observations on the progress of discussions by the committee.

Chair Maruska advised that Vice Chair Thompson requested an update by Washington State Department of Transportation (WSDOT) at the December or February meeting on the status of the department's involvement in the Design-Build Best Practices Committee.

Mark Gaines, WSDOT, affirmed the department received some additional funding and the update could include the department's approach to Design-Build, new template documents, and a new policy.

Data Collection Committee Report – Action

Mr. Nygaard said the proposal is the same draft presented at the previous meeting and the request is for approval of the recommendations.

Chair Maruska inquired about expectations for revising the online data collection system should the Board approve the recommendations. Mr. Nygaard replied that it's his understanding that the collection system would be updated.

Ms. Deakins reported any change in the electronic reporting system involves a prioritization process.

Mr. Frare added that should the Board forward an assignment, staff would develop a schedule for the Board's review next month.

Senator Hasegawa reported on his recent appointment to the joint legislative committee, Information Technology Project Oversight and Budgeting Committee. He's unsure of any future implications because many of the decisions are based on constraints and the burden of the data collection process. There may be implications to the Board in its data collection recommendation; however, he's unsure at this time as the committee was recently formed.

Chair Maruska offered to share CPARB's experience on data collection with the committee.

Gary Rowe moved, seconded by Mike Shinn, to approve the Data Collection Committee's proposal as presented. Motion carried unanimously.

Agenda Items for December Meeting

Agenda items for the December 10 meeting include:

- PRC Report
- Small Works Roster – Endorsement of Proposed Bill
- Follow up on Public Hospitals Districts – Presentation of amendments to RCW 70 removing restrictions on bid amounts. More input is required for JOC legislation
- Report from WSDOT on D-B Best Practices
- Report from D-B Best Practices Committee
- Best Practices for MCCN/ECCM
- Data Collection Timeline
- Building Envelope Legislation Update

Senator Hasegawa expressed interest in receiving the proposals from the Public Hospital Districts.

Mr. Shinn recommended including a review of best practices for MCCN/ECCM processes because of the feedback he's been receiving within the industry.

Chair Maruska reviewed the process for establishing a committee and assigning a specific task to the committee. He suggested submitting a proposal outlining the committee's task and purpose to enable the Board to determine whether formation of a committee is warranted.

Mr. Shinn requested inclusion of the topic on the December agenda.

Vice Chair Thompson commented that RCW 39.10 should be as broad as possible and it's important to define a mission for the committee. Mr. Shinn described the problem occurring over the last two years. Contractors who served as public contractors are no longer public contractors as mechanical and electrical contractors engaged in public work are receiving the work under MCCN/ECCM and excluding other contractors from competing.

Ms. Deakins reported on the new reporting format for the JOC data collection that is scheduled for release in late December or early January.

Adjournment

Walter Schacht moved, seconded by Bill Frare, to adjourn the meeting at 12:22 p.m. Motion carried unanimously.

Staff & Guests

Nancy Deakins, DES
Searetha Kelly, DES
Aleanna Kondelis, City of Seattle
Tom Gow, Puget Sound Meeting Services
Frank Lemos, WA Minority Bus. Adv. Council
Dick Lutz, Centennial Construction
Curt Gimmestad, PRC
Ato Apiafi, Ato Apiafi Architects
Mark Gaines, WSDOT
John Ahlers (via telecon)

Kelsey Beck, City of Seattle
Edwina Martin-Arnold, OMWBE
Jerry Vanderwood, AGC
Bob Armstead, NAMC
Larry Stevens, NECA
Ben Lindekugel, WAPH
Linneth Riley-Hall, Sound Transit
Thuy Hong, Sound Transit
Jaycene Marini, Centennial

Robert Maruska, CPARB Chair

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net