

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

1500 Jefferson – Presentation Room

Olympia, Washington

December 11, 2014

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Vince Campanella	General Contractors	Vacant	Construction Trades Labor
Christopher Hirst	Private Industry	Vacant	Senate (R)
Mark Riker	Construction Trades Labor	Helaine Honig	Cities
Steven Crawford	School Districts	Rep. Vincent Buys	House (R)
William Frare	DES	Vacant	Engineers
Alexis Oliver	OMWBE	Greg Fuller	Specialty Contractors
Robert Maruska (Chair)	Washington Ports	Ty Heim	Public Hospital Districts
Alan Nygaard	Higher Education	Rep. Kathy Haigh	House (D)
Gary Rowe	Counties	Senator Bob Hasegawa	Senate (D)
Walter Schacht	Architects		
Ed Kommers (Vice Chair)	Specialty Contractors		
Charles Horn	Insurance/Surety Industry		
Andrew Thompson	General Contractors		
John Ahlers	Private Industry		

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 9:04 a.m.

A meeting quorum was attained.

Everyone present provided self-introductions.

Approve Agenda

Chair Maruska advised members of the removal of the agenda topic on “Revisions to RCW 39.19.170 Waiver for Performance Bond for MWBEs.”

Several members advised of their early departure from the meeting because of other meetings. Chair Maruska noted some minor reordering of agenda items to accommodate those members leaving the meeting earlier.

John Ahlers moved, seconded by Vince Campanella, to approve the agenda as amended. Motion carried.

Approve November 13, 2014 Meeting Minutes

Ed Kommers requested a correction to the spelling of Lee Newgent’s name on page 7.

Bill Frare requested a minor revision to the last sentence of the fourth paragraph on page 3 to reflect, “Mr. Lebo has been at UW for over 20 years and is currently a major leader within the capital facilities project office.”

Ed Kommers moved, seconded by Bill Frare, to approve the November 13, 2014 minutes as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Project Review Committee (PRC)

December Meeting

Linneth Riley-Hall, Chair, PRC, (via telecon) reported on the results of the December PRC meeting. The meeting was held in December because of the Thanksgiving holiday.

The application from the Washington State Convention Center Facility Extension for GC/CM was pulled and deferred for consideration at a future date.

The PRC reviewed the Washington State Department of Transportation (WSDOT) Ferries Division, Coleman Dock Project for GC/CM. The PRC panel unanimously approved the application. The project is a \$268 million project, but is currently funded at \$13 million for design and preconstruction. WSDOT assembled a team of GC/CM experienced staff, as well as a GC/CM experienced consulting team including Parametrix, with advisors and mentoring input from current and past UW Alternative Public Works delivery staff. The project is multi-phased.

The next PRC meeting is scheduled on January 26, 2015 with applications due by January 2, 2015.

John Ahlers asked whether the Coleman Dock project was under the Heavy Civil GC/CM statute and whether the project was the first project utilized under the statute by WSDOT. Ms. Riley-Hall advised that the project is proceeding under the Heavy Civil GC/CM statute. The project is the first for the agency to undertake the PRC process for review and approval of a project. Mr. Ahlers asked whether any issues arose about funding for only the design phase versus full funding for the project. Ms. Riley-Hall said PRC panel members discussed the funding aspect but because funding is not a RCW requirement, it didn't affect any decision factors. Additionally, it was addressed through emails because the project wasn't fully funded. The PRC has considered other GC/CM projects that were only partially funded because of future bonding or ballot measures.

Ms. Riley-Hall asked for the Board's consideration to issue thank you letters to departing PRC members thanking them and acknowledging their service on the PRC.

Ms. Riley-Hall asked for consideration to post information on the Board's website on the AG-GC/CM training scheduled for January 29-30. Class registration is full and the posting would be for informational purposes.

Chair Maruska supported the issuance of thank you letters for outgoing PRC members both as a thank you for their service as well as confirming their term of service. The Board will work with staff to ensure letters are prepared.

Nancy Deakins recommended posting training dates for June since the January class is full. Ms. Riley-Hall advised of an upcoming planning meeting for the January training. She agreed to review the review the schedule of future training dates with staff for posting.

Public Body Certification Issues

Ms. Riley-Hall referred to the issues pertaining to public body certification. The issue was prompted by an application submitted by Lake Washington School District in May and declined by the PRC. The district requested agency approval for GC/CM delivery. The PRC declined the request in a rare split decision. The PRC is seeking guidance from the Board on next steps. The main issue surrounds whether it's acceptable for public agencies, which otherwise meet the statute requirements, to retain expertise by utilizing consultants.

Typically, the way the PRC addresses the question could impact the response. The question is whether the statute, RCW 39.10.270, allows consultant GC/CM expertise to be considered for agency approval.

Mr. Riley-Hall reviewed several PRC email comments on the question. Additionally, the PRC has not engaged in a discussion on the input offered by members through email. She reviewed some of the email responses:

- The statute stipulates that the public body must have successfully completed at least one GC/CM project in the last five years to be eligible for certification. How do we define public body? If their successful project was with a consultant other than the one the agency is proposing to use, does that meet the criteria?
- Early on, it was decided by the PRC that public bodies could use consultants for their GC/CM experience in the case of project approvals. I do not believe that any of the certified public bodies approved to date had to do that. The application was groundbreaking as the other agencies granted certification did not use consultants.
- In my opinion, the statutes require only that the applicant demonstrate adequate qualified resources either on staff or with a consultant(s).
- The statute requires direct employee experience/expertise.
- Yes, I strongly believe that the RCW intent is that the agency has direct employee expertise and experience of agency staff for agency certification.
- I do not believe agencies should be allowed to use consultants to fulfill their experience requirements unless they are under contract for the term of the agency approval.
- RCW 39.10.270 project review committee – certification of public bodies, states in section 3(b) that the public body has the necessary experience and qualifications to carry out the alternative contracting procedure but not limited to project delivery experience personnel with appropriate construction experience. As written, the public body must have personnel with appropriate construction experience, which is different from alternative contracting experience.
- RCW 39.10.280 project approval process - the public body has the necessary experience or qualified team to carry out the contracting procedure. This section specifically mentions “qualified team.”
- School districts must obtain a 60% voter approval of proposed bonds to obtain funding. Some districts have developed in-house staff to manage programs or projects. Other districts, perhaps wary of continued voter approval, have decided to manage programs and projects utilizing consultant services. A district’s staffing model should not be the basis for approval or denial of agency certification.

Mr. Riley-Hall advised that the PRC would likely convene a meeting with advocates on each side of the issue to try and attain a consensus and then finalize a proposal for presentation to the CPARB.

Mr. Kommers commented that it might be appropriate for the PRC to develop a written response and a series of questions to a committee assigned by the CPARB to review to assist in resolving the issues. As a co-author of the legislation, there was some uncertainty in some of the answers and the intent was to maintain some consistency while allowing flexibility for the public body during the process, which is the purpose of creating the PRC - to evaluate applications on their merit and examine whether the public body demonstrates that it has the capability. The PRC through its stakeholder group would have the ability to evaluate those proposals. In terms of certification, the requirement was higher, as it was anticipated in project approvals that a public body would have to engage consultants to assist them in completing the GC/CM process. That aspect was acknowledged, and that it would up to the PRC to ensure the public body has the appropriate expertise in place. Certification of a public body in his viewpoint is a higher requirement, in that the public body would have to demonstrate a higher longevity to be able to have a repeating process in place. He doesn’t believe the

authors of the provisions ever intended to prevent the inclusion of consultants or negate a consultant at that level. Options were open and it would be up to the PRC to evaluate whether it was a short- or long-term contract or a public body that has engaged the services of a consultant over a long period. It was recognized that even the engagement of an employee is never permanent. The PRC has the ability to determine the experience factor. It was also clear that the public body had to have at least one GC/CM alternative project completed and the experience of the consultant did not meet that intent. The intent of the provision was that for a public body to receive certification, the public body had to have experience of an alternative public works project and then request certification.

Gary Rowe echoed similar comments. Numerous public entities are not able to afford staff to meet all the eligibility requirements and shouldn't be limited because they do not have in-house capability. The utilization of a consultant will always be a factor for some public entities to pursue alternative public works projects. The path leading to public certification shouldn't be restricted because the public body utilizes consultants.

Andrew Thompson recommended PRC members should review their specific interpretation of the RCW versus a philosophical interpretation because according to one of the coauthors, there is a higher bar for public bodies to receive certification, which appears to be the intent of the RCW.

Walter Schacht suggested posing some questions to the PRC for its debate of the statute and having a committee or task force review the responses. The issue of continuity of consultant involvement is critical. There are no guarantees that any employee remains employed versus a consultant, which might raise the question that during the certification of a public body, the public body should have more than one employee with expertise in alternative public works delivery. The goal is certifying the agency rather than the individuals. Another concern is utilization of a consultant and fairness during the selection process because most public bodies have strict rules about engagement between members of the public body and perspective consultants and contractors bidding for the project. If a consultant is separate from the public body, those rules could change, and it could impact the selection process, which should be considered. Finally, if the bar remains high for certification of public bodies and it's determined that expertise is required in-house, the issue is the penalty to those public bodies that must apply for each project approval and whether the agencies suffer any duress by the requirement to apply individually to the PRC for projects.

Christopher Hirst pointed out the statute doesn't require a public body to have multiple employees experienced in alternative public works delivery. He urged the PRC to consider whether a staff member(s) with a public entity who has experience in managing projects through consultants of alternative delivery projects can acquire the experience contemplated by the statute. He's familiar with the district's capital projects manager who has managed several GC/CM projects through consultants.

Mr. Ahlers commented that most public entities operate through consultants. He questioned how the change in consultant by the public body might change the entity's certification, particularly if it's a small organization with limited continuity of personnel. It was one of the questions raised by the PRC that should also be addressed.

Alexis Oliver suggested the issue is more than philosophical and pertains more to the interpretation of the statute language pertaining to personnel. She supports establishing a work group to examine the issues rather than a general discussion by the Board. Certification of entities is a higher bar for a longer period for multiple contracts and it's important to assess the impact on any public body if not certified for alternative public works projects.

Steve Crawford shared he attended Lake Washington School District's PRC presentation. The PRC deliberations were split in terms of interpretation of the RCWs. Under 39.10.270, the provision stipulates personnel with appropriate construction experience, which was interpreted by some PRC members as the public body having the necessary in-house personnel experience. Under 39.10.280 for the project approval process, language stipulates "project team" for experience. The difference between the RCWs caused the difference of opinions in terms of whether the applicant met the requirements of the RCW.

Ms. Oliver asked for additional information on why the PRC considered both chapters in the RCW as one applies to certifying particular projects (lower threshold) while the other applies to certification of a public body. Mr. Riley-Hall replied that public agencies applying to the PRC for either agency approval under 39.10.270 or project approval under 39.10.280. Lake Washington School District applied for certification under 39.10.270. The questions asked of the applicant are different from those questions asked under the project approval process. In this case, the questions pertained to the certification of public bodies. Because PRC members are familiar with both statutes and serve on both types of panels, the discussion extended into both statutes.

Chair Maruska shared his perspective. Much of the discussion has focused on 39.10.270 3(a) & (b) and the qualifications necessary. However, public entities must make the decisions and determine what's appropriate. As the Board considers the issue, it might benefit the process by considering those two functional perspectives as deciding whether a particular delivery method is appropriate for any given project is the responsibility of the agency and not the consultant.

Bill Frare suggested that as a policy board, the CPARB should be providing guidance on what benefits the Board is adding to the process rather than just following the prescription of the law. Public agencies want to complete projects in the most cost-effective and low-risk process. Public agencies utilize alternative public works in three ways: a single project, multiple projects, or agency certification for alternative public works as a business model with projects completed on a regular basis. For those agencies delivering projects as a business model, agency certification is important and it's essential to address how those projects can be reviewed administratively and in a non-burdensome manner.

Chair Maruska thanked Ms. Riley-Hall for the information. The Board will determine whether a task force or work group should be assigned. He encouraged her to reach and include others in the discussion.

Mr. Kommers, Mr. Schacht, and Mr. Hirst expressed interest in participating in the PRC discussions.

Public-Private Partnership

Mr. Ahlers reported that during his research of statutes on public-private partnerships, he discovered the first public-private initiative was a transportation PTI bill with one project completion in 2002 of the Tacoma Narrows Bridge project. The statute required obtaining legislative approval prior to initiating a project. In 2005, an alternative statute was adopted, Transportation Initiative Partnerships Act, which is still in effect. The statute is primarily for state transportation projects.

During discussions with stakeholders, it was acknowledged that one way of addressing the maintenance of infrastructure today is through public-private partnerships. The Governor is also considering a carbon tax. Today, approximately 40% of all carbon emissions are from transportation sources. Private-public partnerships might be a way of addressing infrastructure maintenance needs in the future. Stakeholders have discussed whether to investigate either through existing or new statutes ways to assist promoting more public-private projects. Mr. Ahlers said he previously suggested forming a committee or work group to explore options. During a recent poll in the industry, he's learned there is significant interest in pursuing public-private

partnerships, particularly from the contractor community. He recommended establishing a committee to explore options under this particular delivery model.

Chair Maruska said a number of other states have current statutes for public-private partnerships. Mr. Ahlers said many contractors in the state are supportive of the delivery model. The State of Virginia has the most experience. He recommended reviewing the statute in Virginia. Sixteen states allow some degree of public-private delivery methods.

John Ahlers moved, seconded by Gary Rowe, to establish a committee to focus on public works and alternative delivery methods, evaluate existing statute, RCW 27.29, Transportation Initiatives Partnership, and if existing statute isn't appropriate, draft proposed statutory language.

Mr. Rowe commented that a committee effort provides the vehicle necessary to explore all options and to learn why the statute hasn't been widely utilized.

Chair Maruska spoke to some of the benefits of public-private partnerships in the right set of circumstances.

Motion carried unanimously.

Chair Maruska appointed Mr. Ahlers as the interim chair until selection of a chair by the committee. Boardmembers Rowe, Campanella, Hirst, and Riker volunteered to serve on the committee in addition to representatives from Washington Ports, Granite Construction, Higher Education, Architects, and OMWBE. To attain a meeting quorum, six members must be present. Other potential members included representatives from WSDOT and Sound Transit.

Chair Maruska moved, seconded by John Ahlers, to appoint the following to the Public-Private Partnership Committee:

- 1. Washington Ports representative***
- 2. Granite Construction***
- 3. Mark Riker***
- 4. Higher Education***
- 5. John Ahlers***
- 6. Chris Hirst***
- 7. Vince Campanella***
- 8. Representative from Architects***
- 9. OMWBE representative***
- 10. Gary Rowe***

Others: WSDOT and Sound Transit

Motion carried unanimously.

The meeting was recessed from 10:14 a.m. to 10:29 a.m. for a break.

Discussion Potential Legislation

Revisions to RCW 36.01.050 – Venue of Actions by or Against Counties

Mr. Ahlers described the proposal presented by the Washington Chapter of the National Utility Contractors Association (NUCA), which identified that during a contract dispute with a county, the county specifications

require the dispute to be considered by the county in which the contract work is being performed. The association is requesting resolution of disputes by an independent entity, such as a jury or judge rather than taxpayers of the county in which the work is performed. The Board received a memorandum with proposed revisions to the venue statute. He introduced Brett Hill and Mike Pellitteri, representing the Washington Chapter of NUCA.

Mr. Hill reported the existing statute provides for those individuals suing a county to file the lawsuit in the county of the lawsuit or in the two neighboring counties. The statute has been in effect for over 100 years. Today, companies contracting with counties must agree to a venue clause as a condition to contracting requiring all lawsuits against the county to be filed within the county. The purpose of the existing statute, RCW 36.01.050 is to ensure fairness and to avoid the appearance of partiality. When the legislation was created, the Legislature recognized the importance of providing parties filing a lawsuit with the ability to file the lawsuit in one of the neighboring counties to avoid judicial influence by the affected county. The proposal modifies RCW 36.01.050 and adds the following language:

(3) Any provision in a public works contract with any county that requires actions arising under the contract to be commenced in the superior court of the county is against public policy and the provision is void and unenforceable. This subsection shall not be construed to void any contract provision requiring a dispute arising under the contract to be submitted to arbitration.

The intent of the proposal is ensuring fairness for contractors entering into contracts with public bodies and removing the requirement to waive statutory rights as a condition for award of a contract.

Mr. Pellitteri reported he is president of a public works contracting company primarily completing projects for counties, school districts, cities, fire districts, and public utility districts. Of all the contracting completed by the company, contracts with counties are the most challenging because of the technical specifications and Division 1 specifications that are geared in favor of the county. King County, as an example, includes notice provisions for a claim whereby the contractor is required to provide notice to the county within so many days in which the county has a specific number of days to respond. If the county doesn't respond by the end of the claim period, the claim is denied. The request is to clarify the perception of unfairness.

Mr. Kommers requested clarification on the request to the Board. Mr. Ahlers recommended the Board should engage in a debate to determine if there is support for the proposal.

Mr. Kommers said he expressed concerns about the proposal coming before the CPARB at the November meeting. Today, he no longer has the same concerns based on the receipt of additional information.

Mr. Schacht said the issue was discussed by architects at the American Institute of Architects (AIA) and by the Architects and Engineers Legislative Council, representing a coalition of engineering and architectural associations within the state. There was unanimous support for enforcement of the intent of the original RCW. It appears the proposed language emphasizes how an existing law should be enforced. Currently, the challenge is enforcement of the law, which would require action against the public agency to sign a contract, which otherwise would be awarded. Mr. Hill responded and described reasons for supporting the proposal. Additionally, most counties include timelines for completion of the alternative dispute resolution process, which often leads to expiration of the timeline for filing a lawsuit.

Mr. Pellitteri referred to a recent project in King County and a request by a bidder to the county to change its contract specifications to align with the law. King County refused to change the specifications. There are no opportunities available for contractors to negotiate with counties on this matter.

Chair Maruska asked about any particular incident that might have elevated the issue. It appears counties have imposed more restrictions than the law prescribes. Mr. Hill replied that there is no specific case and the request is acknowledging an existing statute was adopted for a reason. It addresses situations when suing a county. The request is to enforce existing statutes, as there are no specific cases that documents whether the outcome of a case would have been different. However, many counties have changed the specifications to include the venue waiver. Contract specifications have been obtained from King Pierce, Thurston, Kittitas, Cowlitz, and Snohomish Counties for review prior to this presentation.

Chair Maruska referred to rural counties and the extensive length of distance between some counties. Mr. Hill noted that the legislation was modified after its original adoption, which addresses the nearest judicial district rather than only a neighboring county. Judicial jurisdictions must be within the two nearest counties by travel time. The Legislature's website identifies the closest county based on driving time. Chair Maruska asked about the potential for a cost impact to neighboring jurisdictions. Mr. Hill said there would be cost impacts for both parties if a contractor in King County was sued and the case was considered in Snohomish creating the need for both parties to travel to Snohomish County.

Mr. Campanella supported the proposal, as it enables a level of fairness although he agreed that it shouldn't be necessary for new legislation to enforce existing law.

Mr. Frare asked whether the law has been challenged. Mr. Hill said not to his knowledge.

Mr. Ahlers added that a contractor would be required to challenge the venue specification before a judge who is funded by the taxpayers of the county. Losing the challenge could lead to an appeal, which is expensive and time consuming. An inappropriate guess could void the entire case if the timeline is exceeded.

Mr. Rowe acknowledged that as the representative of counties, he's hopeful he is not the only member opposing the proposal. He asked the Board not to consider taking a vote in support for several reasons. Counties have opposed the bill in the past. The conversation about leveling the playing field doesn't reflect reality as he's worked in a number of counties and the judge never preferred the county's position in any issue. Judges consider the facts and render decisions based on a determination of the appropriate action. Counties handle thousands of contracts around the state and if there have been some instances where companies believed they were not fairly treated through the court system, it likely wouldn't be sufficient to demonstrate that the situation occurs frequently throughout the state. He asked the Board not to take action to support the proposal as it's unclear what the proposal is attempting to solve and it could create some disadvantage to public agencies.

Mr. Hirst said he's heard some concerns about the proposal not because of the specific change but because it might have a spillover effect. The great majority of public entities within the state do not have boundaries that coincide with a county. Port districts, school districts, and higher education do not occupy their counties. He asked whether the same concern applies if public entities don't occupy the county. Mr. Ahlers replied that the distinction is that the judge is a county judge and juries are county taxpayers. The jury is drawn from the county taxpayers. It's in the financial interest of the court to render a decision against a contractor because the cost would be borne by the county and its taxpayers.

Alan Nygaard said he's troubled with proposing legislation to enforce existing legislation. As the law exists, it's up to the courts to determine if the law is followed. In terms of fairness, the University of Washington could be sued and the expectation is that the judge would be fair regardless of the judicial location. If a contractor requests a county to modify a contract during the bid process, it might lead to a legal challenge. As

long as the county is unwilling to modify the document it would constitute a legal challenge and could be considered by another judicial district as, the contractor is not a party to the contract.

Mr. Ahlers suggested considering the position of a contractor who is bidding on a project who asks the county to modify the provisions of the contract and is informed that contract would not be modified. The bidding contractor would be obligated to pursue the expense of a legal challenge and the likelihood of that situation is remote because contractors are not going to challenge the issue at their cost. In that circumstance, the county would prevail because there is no contractor willing to assume the financial cost to challenge the provision.

Mr. Crawford agreed it's unfortunate to consider adding language to existing law to enforce the law. However, it does appear to be a situation where contract language circumvents or is contrary to the law, which the Legislature was clear in terms of intent. Creating an unequal playing field or a situation of unfairness creates a situation where the issue should be addressed.

Mr. Schacht said that although he's supportive of the intent he questions the mechanism. He asked about the possibility of pursuing the issue through the Office of the Attorney General (OAG) to render an opinion. In terms of owner provisions applicable to architects and engineers by public agencies, prior amendment of laws finally ensured some fairness, which might lead to the same situation where public bodies might include the provisions despite the statute requiring a new statute to enforce existing law. The AIA was successful in prompting public agencies to revisit provisions to contracts that are in violation of laws by seeking assistance through the OAG.

Mr. Ahlers conceded that it would likely be possible but could result in uncertainty because of the timeline for rendering an opinion.

Mr. Rowe said he assumes that regardless of the Board's position, the proposed legislation would be pursued by the association and membership. The proposal should be debated in the Legislature with a variety of stakeholders. However, it's unnecessary and inappropriate for the CPARB to take action to support the proposal because it's a legal issue and not tied to the alternative public works delivery methods.

Discussion followed on potential action by the Board. Mr. Ahlers indicated that the Board would not be asked to support a motion. However, NUCA plans to move forward and is appreciative of the Board's time and consideration of the issue.

Ms. Deakins clarified that the duties of the Board under RCW 39.10.230 speaks to evaluating traditional and alternative delivery methods in the state.

Mr. Schacht left the meeting.

Revisions to RCW 25A.40.210 Class II Cities Bid Limits

Doug Levy, Lobbyist for the City of Kent, joined the meeting via telecon and provided an update on the progress of the issue of code cities receiving less authority on bid limits. The Board had requested development of language clarifying and resolving any unintended consequences. With the assistance of Allison Hellbert with the Association of Washington Cities, language was drafted providing more consistency to the existing statute. The Board also questioned the process local jurisdictions could pursue to ensure work is quality and certified. That issue is also addressed. The Board wanted to ensure the draft was in bill draft form and available for CPARB members. The legislative process in the adoption in the 2009 bill essentially codified some apparent inequities, which the proposal attempts to address. The draft includes adding a 10% limitation.

Chair Maruska said the proposal addresses his previous concerns.

Larry Stevens, National Electrical Contractors Association, said the issue does not pertain to the CPARB and does not pertain to capital projects or alternate public works, but rather whether construction work is completed by the private sector or in-house by public employees. The association supports the completion of all public works projects by the private sector. The issue has been an a long-term and ongoing issue existing prior to the formation of the CPARB and alternate public works methods and likely would continue after the Board no longer exists. It's a budget issue the Legislature should consider, as the issue is whether public owners are receiving monetary advantage by completing work in-house rather than contracting with the competitive private sector. The association contends that the private sector should have the opportunity to demonstrate the benefits of contracting by ensuring a level playing field as public owners should not be pursuing more construction work in-house.

Mr. Ahlers left the meeting.

Mr. Nygaard and Chair Maruska requested clarification of the request to CPARB in terms of the proposed bill. Mr. Levy said the request is not for CPARB to sponsor the proposed legislation but rather to endorse the proposed legislation as an improvement to existing legislative policy. The proposal pertains to some isolated incidents.

Mr. Kommers said he didn't object to a vote by the CPARB, as there is a connection to the previous house bill sponsored by CPARB even though he opposes the proposal.

Mr. Frare said he doesn't believe the proposal is under the purview of CPARB. The proposal doesn't pertain to contract provisions and involves a decision rendered by a jurisdiction prior to determining whether to pursue a contract bidding process.

Mr. Rowe said counties have different statutory limitations. The ability to complete capital projects with in-house staff can be an efficient way to complete projects. Although, he understands some of the arguments that larger projects can often be achieved at a lower cost through the private sector, costs associated with the bidding process can add considerable cost to a project. He supports the proposal affording a level field for all cities having the same limit.

Mr. Riker agreed with Mr. Steven's comments from the previous meeting that the legislation wasn't an untended consequence that there were efforts to change the original language.

The CPARB offered no motion on the proposal. Chair Maruska thanked Mr. Levy for his time and efforts.

Chair Maruska reminded members that the Board elected not to take action on the proposal and members electing to testify in support of the proposal before the Legislature should not represent themselves as a member testifying on behalf of CPARB.

Changes to JOC Limits

Mr. Frare recapped the discussion during the previous meeting on proposed changes to JOC limits. The volume of work completed by DES for its client agencies is impeded by JOC limits. The proposal would increase JOC contracts to six contracts and \$6 million. Currently, the State Board of Community and Technical Colleges have worked with DES to expedite small works or minor works programs. Approximately 60% is scheduled for completion of the minor works budget because of the difficulty associated with JOC

limits. DES bids on JOCs typically max out in seven months leaving the agency with no contracting method to complete other projects. He asked the Board to endorse the proposed Job Order Contracting legislation by DES.

Chair Maruska referred to the previous discussion and the proposed bill from DES for changes that might impact other public agencies. He requested clarification as to whether the proposal is intended to be applicable to DES only. Mr. Frare conceded that while other interests exist at this point, the request is endorsement by CPARB for increasing the limits of JOC for DES from four contracts to six contracts and from \$4 million to \$6 million.

Bill Frare moved, seconded by Alexis Oliver, to endorse legislation to increase DES Job Order Contracting limits from four contracts to six contracts and from \$4 million per contract to \$6 million per contract.

Mr. Thompson asked whether there is an expectation of other agencies requesting inclusion in the legislation as the legislative process moves forward. His company endorses the proposal.

Chair Maruska clarified that when the Board renders a position on a bill that endorsement doesn't continue if the bill is modified through the legislative process.

Mr. Rowe suggested the possibility of an amendment to expand applicability to include other public bodies. He asked whether the endorsement by the CPARB is indicative that any change would elicit opposition testimony. Chair Maruska said the action is on specific language and that the Board would remain neutral on legislation that changes original language.

Mr. Riker reported on labor's opposition to the proposal because of several factors. The main issue is because increasing the cap from \$16 million to \$36 million cap is not reasonable and is too large an increment. Although the agency might have exhausted JOC capabilities, it doesn't stop further work as there are other methods, such as traditional public works bids.

Mr. Frare explained that at certain times of the year, such as the end of a fiscal year or end of the biennium, timing becomes important to administer contracts. JOC is a very administratively efficient process for completion of projects. In those situations, it's important to maintain the ability to administer JOC projects.

Mr. Nygaard said the Board voted at the last meeting to ensure that any outstanding issues were considered separately. He supports the proposal as DES has demonstrated the need by providing sufficient information to render a decision.

Mr. Kommers expressed opposition to expand JOC limits.

Mr. Hirst expressed support for the proposal as the need has been justified. The action would enhance participation by historically under-utilized businesses.

Mr. Thompson spoke in support of the motion and finds that the information provided by DES at the last meeting to be substantial. Ms. Oliver agreed and shared that the OMWBE is supportive of the proposal by DES. She asked about an opportunity to discuss timing of any future CPARB action in terms of any proposed amendments to the bill. Chair Maruska said the next meeting is on February 12. It's unlikely that the CPARB would consider any amendments at that time as the sponsor's proponents would need to determine any amendment strategy moving forward.

Mr. Crawford supported the motion because of the nature of work completed by DES for other public entities.

Motion carried (10/2).

UW Critical Care Roster – Report

Mr. Nygaard reported on the annual requirement to provide a report on the University of Washington's Critical Care Roster. This year, a third party, the Joint Legislative Audit and Review Committee (JLARC) audited UW as required by law as the provision is nearing sunset. JLARC reviewed the work and rendered a positive recommendation to extend the sunset and renew the process for the UW.

The report addresses critical patient care in a highly specialty medical research facility. Mr. Nygaard shared the presentation provided by the JLARC auditor. The report documents that prior to the utilization of University of Washington Medical Center's critical care roster, it took an average of 31 days to contract a project. After implementation of the roster, contracting took 19 days reducing the process by 39% by utilizing the new tool. The hospital now has the ability to prequalify a list of contractors avoiding the qualification process after bidding occurs and substantially improving the speed in approving projects.

At Harborview Medical Center, the results are not as dramatic, but the outcome has improved. One of the reasons for the difference is the requirement for King County to approve the contracts because Harborview is owned by King County with the UW operating the facility.

Another characteristic of the contract was to improve the quality of construction. Prior to the alternative process, 62% of contracts were superior or good. After implementation, 95% of the ratings for the performance of the contractor increased to 95% documenting a substantial improvement in the quality of work received from the contracting community by utilizing the process.

JLARC reviewed different aspects of the administration of the contracts to include contractor and subcontractor solicitation and whether the awards were to the lowest and responsible bidder. One specific provision was whether UW could improve tracking women and minority-owned subcontractors. Specific provisions require UW to solicit women and minority-owned subcontractors; however, the UW hasn't achieved success in contracting with women and minority-owned subcontractors. A way to achieve success is soliciting those companies as the primes, which is unlikely because none of the companies were qualified. However, some improvements are possible through the subcontracting process.

Mr. Frare asked about the size of the contracts. Mr. Nygaard replied that the maximum amount of the contracts is \$5 million.

Mr. Nygaard reported UW was directed to improve the ability to track subcontractors. UW hired additional staffing resources to review invoices to document whether UW has previously hired qualified subcontractors.

Ms. Oliver asked how UW determined that OMWBE firms were not qualified. Mr. Nygaard said UW reviewed the qualifications of 143 OMWBE-certified firms. The biggest obstacle is the qualification to work in patient critical care. Most firms did not have the necessary experience in that type of environment. If information was indicative of some critical care experience, staff contacted the firm to obtain additional information.

Frank Lemos, National Association of Minority Contractors, asked whether certified firms were considered as a prime or as a subcontractor. Mr. Nygaard said that during that process the effort focused on prime contractors. Mr. Lemos asked about UW's plan to qualify subcontractors. Mr. Nygaard said subcontractors

are solicited on an individual project basis with additional provisions included within the contract to include stronger language to enable UW to work with contractors regarding subcontractor selection. Mr. Lemos asked whether UW has contacted the 143 firms and shared information on UW's new direction to encourage subcontractors. Mr. Nygaard advised that UW has implemented several new measures and processes to implement proactive efforts to contact subcontractors, as well as conducting specialized classes. UW maintains "A" and "B" rosters. The provisions for the "A" roster are much more stringent. The "B" roster is used to help build the expertise of other contractors to increase the ability to qualify for the "A" roster.

Mr. Nygaard reported UW met all the conditions required by law and has demonstrated improvements as documented by a third party.

Mr. Frare asked about UW's minority business goals. Mr. Nygaard said the contracts specify 6%-10% minority participation. The UW has established a sub-tier goal of achieving 3%. He provided additional information on the process UW implemented to document participation of subcontractors, which is then validated against OMWBE certifications.

Mr. Kommers said that when the requirement was imposed, there were some concerns in the contracting community about the fairness of procurement. He personally is not aware of any complaints about the fairness of the procurement or any protests. Mr. Nygaard replied that UW has received an excellent response from the contracting community. Having a clear set of expectations helped, as unqualified contractors tend not to apply because they understand the requirements.

Mr. Thompson inquired about the number of firms on each roster. Mr. Nygaard reported nine contractors are included on the "A" roster and 12 are included on the "B" roster. The list changes frequently as projects open for bids.

Revised Operating Procedures/Bylaws

Chair Maruska said that at the direction of the Board, he reviewed the 2008 Operating Procedures and updated the procedures to reflect the current statute. Two areas of revised language include the provisions for the quorum component and language when the Board loses a quorum. A quorum is necessary to conduct a meeting. However, during the course of the meeting, if the quorum is lost, the proposed language allows the Board to continue to conduct business, including but not limited to, receipt of public comment, discussions considerations, reviews, and evaluations but shall not take action until a quorum is present. Other changes pertain to current statute changing "subcommittees" to reflect "committees."

Chair Maruska suggested deferring action on the Operating Procedures and Bylaws until the February meeting to afford time for members to review and propose any changes to the proposed language.

Set Agenda Items for February Meeting

Agenda items for the February meeting include:

- PRC update
- Report by the Operating Procedures and Bylaws Committee
- Status Report and briefing on Life Cycle Costs Analysis/Review A&E concerns with Design Build Procurement Methodology
- Legislative Update
- Public-Private Partnerships Committee Status Report
- Small Public Works Committee Report

Adjournment

Ed Kommers moved, seconded by Bill Frare, to adjourn the meeting at 11:55 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
Brett Hill, NUCA
Servando Patlan, DES

David Mahalko, KCDC
Linneth Riley-Hall, PRC & Sound Transit (via telecon)
Larry Stevens, NECA
Mike Pellitteri, NUCA
Doug Levy, Lobbyist for City of Kent (via telecon)
Allison Hellberg, AWC
Jerry Vanderwood, AGC

Robert Maruska, CPARB Chair

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