

**State of Washington
Capital Projects Advisory Review Board (CPARB)
Project Review Committee (PRC)
OPERATING BY-LAWS**

ARTICLE 1

PURPOSES

The Project Review Committee (PRC) was established by Second Substitute House Bill 1506, Chapter 494, Laws of 2007, Sections 104, 105, and 108 to review and approve public works projects using the design-build and general contractor/ construction manager (GC/CM) contracting procedures. These alternative contracting procedures are authorized in RCW 39.10 (as recodified by Chapter 494, Laws of 2007).

The PRC also was established to certify and recertify public bodies to use these alternative contracting procedures as provided in Chapter 494, Laws of 2007, Sections 105 and 107.

ARTICLE 2

RESPONSIBILITIES

Section 1. Reviewing and Approving Alternative Public Works Projects.
(Ch. 494, Laws of 2007, Sec. 108.)

The PRC is responsible for:

- A. Reviewing project proposals submitted by:
 - 1 Public bodies that have not been certified to use the design-build or GC/CM contracting procedures; and
 - 2 Public bodies that have been certified to use the GC/CM contracting procedure, but whose proposed GC/CM project cost is \$10 million or less.
- B. Determining whether a design-build or GC/CM project proposal meets the criteria of Chapter 494, Laws of 2007, Sections 201 and 203 for design-build, and 301 and 302 for GC/CM.
- C. Approving qualified projects based upon evaluation of information submitted by the public body.

Section 2. Certifying, Recertifying, and Revoking the Certification of Public Bodies. (Ch. 494, Laws of 2007, Sec. 107.)

The PRC also is responsible for:

- A. Certifying that a public body has the necessary experience and qualifications to determine whether the design-build and/or GC/CM contracting procedure is appropriate for a public works project with a total project cost over \$10 million. (paragraph (2))
- B. Recertifying (renewing) this certification for an additional three-year period. (paragraph (5))
- C. Revoking the certification of a public body, when its use of the design-build or GC/CM contracting procedure no longer serves the public interest. (paragraph (4))

Section 3: Complying with Other Laws. In carrying out its responsibilities, the PRC shall comply with the Open Public Meetings Act (Chapter 42.30 RCW), the Public Records Act (Chapter 42.56 RCW), the Ethics in Public Service Act (Chapter 42.52 RCW), and other applicable Washington State laws, now in effect or as hereafter amended or adopted.

Section 4: Procedures and Practices. The PRC shall:

- A. Establish policies and practices for the conduct of its business.
- B. Create and make available application forms addressing all the elements as appropriate.
- C. Hold open public meetings at which applicants and the public can submit information about:
 - 1 Proposed alternative public works projects.
 - 2 The experience and qualifications of public bodies seeking to use the design-build and GC/CM contracting procedures.
 - 3 A public body's resolution of audit findings on previous public works projects.
 - 4 Whether a certified public body's use of an alternative contracting procedure continues to serve the public interest.
- D. Approve or disapprove applications and certifications in open public meetings in accordance with the requirements of Chapter 494, Laws of 2007, Sections 106, 107, and 108, as well as any practices adopted by the PRC.
- E. Prepare and disseminate to each applicant a written statement of its reasons for approving or disapproving an application.
- F. Make information about the alternate contracting procedures, its application process, copies of its application form, its actions, and its meeting notices readily available to public bodies and the public. Methods for disseminating this information can include, but are not limited to, the establishment of web sites and the creation of printed materials.

ARTICLE 3

PRC

Section 1. Composition. Except as noted in Subsection 1.1, the members of the PRC must be appointed by a majority vote of the Capital Projects Advisory Review Board (CPARB) and be knowledgeable in the use of the design-build and GC/CM contracting procedures. All members appointed by CPARB are voting members.

Appointments to the PRC must represent a balance among the industries and public owners on CPARB, as established under RCW 39.10.800 (as recodified by 2007 Session Laws, Chapter 494).

1.1 Temporary Members. If project specific expertise is needed to assist in the review of an application or certification, the PRC Chair may appoint one or more people to serve on the PRC on a temporary basis. Members appointed by the PRC Chair are non-voting members.

Section 2. Term. Except for initial appointments, each member is appointed for a three-year term and may be reappointed to serve more than one term.

For initial appointments, the terms must be staggered so that members are appointed for terms of one, two or three years from the date of appointment.

Section 3. Vacancy. A vacancy occurs whenever a PRC member resigns, has a disability preventing the discharge of his or her duties, dies, or fails to attend two consecutive PRC meetings unless excused by the PRC.

A member must submit her or his resignation, in writing, to the Chair of the PRC.

Within ten business days after a vacancy occurs, the Chair of the PRC must give the Chair of the CPARB written notification of the vacant seat so that CPARB, by a majority vote, can appoint a qualified person to fill the vacancy.

Section 4. Compensation and Reimbursement. In performing their duties, members shall not be compensated. However, members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

ARTICLE 4

PANELS

Public body certification reviews shall be completed by a quorum of the entire PRC.

Project proposal reviews shall be completed by a quorum of the entire PRC, or

The PRC Chair, in consultation with the PRC Vice Chair:

- A. May appoint one or more panels to carry out the duties of the PRC.
- B. Shall designate 8 members for each panel to assure a minimum of 6 members in attendance comprising a quorum of each such panel.
- C. Shall designate a lead person for each panel for conduct and actions undertaken by the panel.

ARTICLE 5

OFFICERS

The officers elected at the PRC's first regular meeting are to serve until June 30, 2008. Thereafter, the Vice Chair shall assume the position of Chair and an election for a new Vice Chair shall be held. Thereafter, on the first day of July each subsequent year the Vice Chair shall assume the role of Chair and a new Vice Chair shall be elected.

Section 1. Chair. The Chair is the presiding officer at meetings of the PRC, and is to execute all documents authorized by the PRC that may require her or his signature.

Section 2. Vice Chair. In the event of the Chair's absence or inability to perform her or his duties, all powers, authority, and duties of the Chair are transferred to the Vice Chair.

Section 3. Vacancy in Office. In the event of a vacancy in an office, the members, by majority vote, are to elect a replacement at the next regular PRC meeting.

ARTICLE 6

MEETINGS

All meetings are subject to the Open Public Meetings Act and the public shall be allowed to comment on the appropriateness of the project for the proposed contracting procedure and the qualifications of a public body to use the proposed contracting procedure, or on the appropriateness of a certification, recertification or revocation of certification. The PRC shall receive and record both written and oral comments at meetings.

All meeting sites shall be determined by the Chair, in consultation with representatives from the Department of General Administration.

Section 1. Regular Meetings. After the PRC holds its initial regular meeting, at which it is to adopt operating procedures, elect officers, and take any other actions necessary to become operational, the PRC shall meet as often as necessary to ensure that approvals and certifications are completely in a timely manner.

- 1.1. Notice.** The PRC shall publish notice of its meetings at least 20 days in advance in the following manner:
- A. In a legal newspaper circulated in the area where each of the proposed projects under consideration will be constructed, where the public body seeking certification, recertification is located, or where the public body whose certification may be revoked is located.
 - B. On the PRC website. In addition, information submitted by the public body to be reviewed at the meeting must be made available on the website at the same time notice is published.

1.1.1. Contents of Notice. The notice must contain the following information:

- A. Identification of the public body that is seeking project approval, certification, recertification, or whose certification may be revoked.
- B. A description of the projects to be considered at the meeting, when applicable.
- C. Where, when and how the public may present comments on the project approval, certification, recertification, or revocation of certification.

Section 2. Special Meetings. The Chairman or a majority of the members may call a special meeting at any time.

- 2.1. Notice.** A written notice shall be delivered personally, by mail, fax, or electronic mail to each member at least 24 hours before the time of the meeting set out in the notice. This notice is to be delivered in the same manner, and within the same time frame, to each local newspaper of general circulation or local radio or television station that has on file with the PRC a written request to be notified of a specific special meeting or all special meetings.
- 2.2. Contents of Notice.** The notice is to specify the time and place of the special meeting, as well as the business to be transacted. At the special meeting, the PRC can only take final action on those matters set out in the notice.
- 2.3. Waiver of Notice.** Written notice is not necessary when a member has filed a written waiver of a notice before or at the meeting by electronic mail, fax, or telegram with the Chair, or is present at the meeting.

Section 3. Teleconferencing. Teleconferencing equipment may be used to conduct the PRC meetings. However, members are to try to attend meetings in-person whenever possible.

The conversations of those participating at the meeting via teleconference are to be sufficiently amplified for the convenience of those physically present at the meeting.

Section 4. Conducting PRC Meetings. The Chairman is to be guided by *Robert's Rules of Order* in conducting PRC meetings.

Section 5. Adjournments and Continuances. The PRC may adjourn or continue its meetings in accordance with RCW 42.30.090 and RCW 42.30.100, respectively.

Section 6. Executive Sessions. The PRC may hold an executive session during any regular or special meeting to consider matters appropriate for these sessions under the Open Public Meetings Act. However, the PRC may take no final action on these matters during an executive session.

ARTICLE 7

PRC ACTIONS

PRC action will be in compliance with the Open Public Meetings Act.

Action means the transaction of the PRC's official business, including but not limited to, receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and **final actions**.

Final action means a collective positive or negative decision, or an actual vote by the members present when sitting as the PRC, upon a motion, proposal or resolution. Final actions include, but are not limited to, final determinations on applications for project approval, certification, or recertification, and revocations of certifications. Voting outcome by the PRC when meeting as a whole shall be determined by

The presence at such meetings of a minimum of 60% of appointed Committee members establishing a quorum.

A supermajority of 2/3 of all present when acting on any Public Agency Application before the Committee.

Voting outcome by an individual PRC Panel when taking action on any Application shall be determined by supermajority of those panel members present as follows:

[Determining votes/members present]: 6/8, 5/7, 4/6, with minimum of 6 panel appointees comprising a quorum for said panel.

In all cases recused PRC members shall not be included in voting outcome calculations.

The committee shall, if practicable, make its determination at the public meeting during which an application for certification or project approval is reviewed. Public comments must be considered before a determination is made.

Within 10 business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's website.

Section 1. Appeal of Final Determinations. Final determinations by the committee may be appealed to the CPARB within seven days by the public body or by an interested party. The appellant must provide a written notice of the appeal to the PRC and, if applicable, to the public body.

Section 2. Recording of PRC Actions. Actions of the PRC are to be recorded in meeting minutes. The minutes of all meetings, except executive sessions, are to be properly recorded, and made available for public inspection and copying in accordance with the Public Records Act.

ARTICLE 8

DEPARTMENT OF GENERAL ADMINISTRATION

The Department of General Administration, in accordance with RCW 39.10.800(9), as recodified by 2007 Session Laws, Chapter 494, is to provide staff support as may be required for the proper discharge of the functions of the PRC. Such support shall include, but not be limited to keeping minutes of all regular and special meetings of the PRC, acting as custodian of all books, records, papers and files, providing meeting rooms, making its equipment and supplies available for PRC authorized purposes, establishing and maintaining the PRC web site, and publicizing the activities of the PRC.

A PRC member who requires resources from the Department of General Administration to carry out her or his responsibilities is to request these resources from the Chair of the PRC. The Chair is to evaluate the request and, if agreeable, submit it to the representative of the Department of General Administration who is responsible for the PRC.

ARTICLE 9

OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General provides legal counsel to the PRC. When the PRC is not sitting, a member who requires legal counsel to perform her or his PRC responsibilities is to request these services from the Chair of the PRC. The Chair is to evaluate the request and, if agreeable, pass it to the CPARB Chair for assignment to the Assistant Attorney General who is providing services to CPARB.

ARTICLE 10

ETHICS AND CONFLICTS OF INTEREST

PRC members are *state officers* under the Ethics in Public Service Act (RCW Chapter 42.52) and are to act in accordance with the provisions of this act.

If a member has or appears to have an interest in an application that has been submitted to the PRC, that member is to (1) disclose that interest to the PRC on the record, (2) recuse

themselves from participation in any meeting involving PRC action on that application, and (3) have no discussion or other contact with another PRC member relating to that application.

Any member of the committee directly or indirectly affiliated with a submittal before the PRC must recuse himself or herself from the PRC consideration of that submittal.

Any person who sits on the PRC or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

ARTICLE 11

INSPECTION AND COPYING OF PUBLIC RECORDS

The inspection and copying of the PRC's public records will be in accordance with the policies and practices of the Department of General Administration.

ARTICLE 12

AMENDMENT

These operational procedures may be amended at any time by a majority vote of the PRC's members.

Panel Procedures: Time allotted During Evaluations:

20 minute applicant presentation (with a 5 minute reminder provided)

15 minute panel question and answer session

10 minutes for public comments only, no questions allowed (limited to 2 minutes per person) unless more total time is needed.

15 minutes for panel deliberations and determination.

Total time: 60 minutes

Note to public:

Public comment session will be clearly stated by the panel chair and will follow the panel question and answer session. Please try to limit individual comments to two minutes.

RCW 39.10.270**Project review committee—Certification of public bodies.**

(1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects without seeking committee approval for a **period of three years**. Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate **successful management of at least one** design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may **renew the certification of a public body for additional three-year periods**. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public body's experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350.

[2013 c 222 § 7; 2009 c 75 § 3; 2007 c 494 § 107.]



RCW 39.10.280**Project review committee—Project approval process.**

(1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, the public body's intended use of alternative contracting procedures, and, if applicable, a declaration that the public body has elected to procure the project as a heavy civil construction project.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

(5) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application.

[2014 c 42 § 2; 2013 c 222 § 8; 2007 c 494 § 108.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.340**General contractor/construction manager procedure—Uses.**

Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

- (1) Implementation of the project involves complex scheduling, phasing, or coordination;
- (2) The project involves construction at an occupied facility which must continue to operate during construction;
- (3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
- (4) The project encompasses a complex or technical work environment;
- (5) The project requires specialized work on a building that has historic significance; or
- (6) The project is, and the public body elects to procure the project as, a heavy civil construction project. However, no provision of this chapter pertaining to a heavy civil construction project applies unless the public body expressly elects to procure the project as a heavy civil construction project.

[2014 c 42 § 3; 2013 c 222 § 12; 2007 c 494 § 301. Prior: 2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3. Formerly RCW 39.10.061.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Effective date—2002 c 46: See note following RCW 39.10.300.

Effective date—2001 c 328: See note following RCW 39.10.210.

RCW 39.10.300**Design-build procedure—Uses.**

(1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years.

[2013 c 222 § 9; 2009 c 75 § 4; 2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Effective date—2002 c 46: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 46 § 5.]

Effective date—2001 c 328: See note following RCW 39.10.210.

