

**CAPITAL PROJECTS ADVISORY REVIEW BOARD
Special Meeting**

1500 Jefferson Street SE
Presentation Room
Olympia, Washington 98504

January 11, 2019

DRAFT - Minutes

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Walter Schacht (<i>Chair</i>)	Architects	Senator Bob Hasegawa	Senate (D)
Rebecca Keith (<i>Vice Chair</i>)	Cities	Brent LeVander	General Contractors
Brian Belarde (<i>Telecon</i>)	Construction Trades Labor	Mark Riker	Construction Trades Labor
Steven Crawford (<i>Telecon</i>)	Higher Education	Rep. Steve Tharinger	House (D)
Bill Frare	State Government	Senator Judy Warnick	Senate (R)
Greg Fuller (<i>Telecon</i>)	Specialty Contractors	<i>Vacant</i>	Hospital Districts
Joaquin Hernandez (<i>Telecon</i>)	Private Industry	<i>Vacant</i>	House (R)
Charles Horn (<i>Telecon</i>)	Insurance/Surety Industry		
Santosh Kuruvilla (<i>Telecon</i>)	Engineers		
Robert Maruska	Washington Ports		
Mike McCormick (<i>Telecon</i>)	Higher Education		
Irene Reyes (<i>Telecon</i>)	Private Industry		
Mike Shinn (<i>Telecon</i>)	Specialty Contractors		
Andrew Thompson (<i>Telecon</i>)	General Contractors		
Lisa van der Lugt (<i>Telecon</i>)	OMWBE		
Jane Wall (<i>Telecon</i>)	Counties		

Staff & Guests are listed on the last page

WELCOME & INTRODUCTIONS

Chair Walter Schacht called the Special Capital Projects Advisory Review Board (CPARB) meeting to order at 10:01 a.m.

Members present and participating by teleconference provided self-introduction. A meeting quorum was attained.

Chair Schacht advised members that because the meeting was called as a Special Meeting, topics for consideration are limited to only those included on the published agenda. At the December 13, 2018 regular meeting, the Board engaged in a detailed discussion about proposed modifications to the Design-Build statute proposal, which the Board approved and passed in October 2018. The Board also authorized the Chair and the Vice Chair to initiate two changes to the statute. The first change was replacing “may” with “shall” with respect to qualifications selection criteria for OMWBE certified firms, veteran certified firms, and small businesses. The second change added a requirement to track and report on behalf of the selected firm its use of those firms. The current Code Reviser document reflects those two changes.

Subsequently, the Chair and the Vice Chair learned that two other issues were raised by the National Minority Business Advisory Council for other changes to the statute that were not addressed by the Board at its meeting on December 13, 2018. Those two issues are for discussion during the meeting.

Vice Chair Rebecca Keith cited the proposed changes for discussion:

- RCW 39.10.270 modifying paragraph 4 as follows, “The committee shall if practicable make its determination at the public meeting during which an application for certification is reviewed.” The proposed changes removes, “if practicable” from the statute.
- RCW 39.10.320(1)(f) – A modification proposed by the Chair stating, “Contract documents that require the contractor, subcontractors, and designers to submit plans for use of office of minority and women’s business enterprises certified, minority, women, veteran, and small businesses as subcontractors and suppliers.”

APPROVE AGENDA - Action

Bill Frare moved, seconded by Robert Maruska, to approve the agenda as published. A roll call vote approved the motion unanimously.

PROPOSED CHANGES TO DESIGN-BUILD (DB) STATUTE REVISIONS – Action

Chair Schacht referred to the proposed modification to Section 3 RCW 39.10.270(4) to remove the term “if practicable,” so that in effect any application for certification by a public agency by the Project Review Committee (PRC) would render its determination at the time of the public meeting. Chair Schacht reported he consulted with PRC Chair Janice Zahn regarding the proposed change.

PRC Chair Zahn verified that when the application is received and a PRC panel has been established, panel members generate questions to the public owner. The public owner responds to the questions. During the application presentation to the panel, all questions are asked and answered followed by the panel’s deliberation and recommendation. The PRC does not defer voting to another time. However, she followed up with some members originally involved in the adoption of the statute and received no feedback with respect to the origin of the language stating, “if practicable.”

Robert Maruska added that as a member involved in the legislation, at that time the PRC had recently been established and there was some uncertainty as to PRC’s process flow. The intent was to render a decision during the public meeting. However, the language provided some flexibility should the process dictate a later decision. During his tenure as the Chair of CPARB, there was never an incidence where a decision was not rendered during the public meeting. The language was likely included to afford the ability to address a situation that has never occurred. Revising the language would not materially change the statute.

Ms. Zahn noted there have been several instances where the application was not approved because of some open questions that the owner and the presentation team were unable to answer. The process enables the PRC panel to review all information published in the application, provided during the question and answer session, through written submissions, and during the public meeting. Functionally, that is how open questions are addressed. The panel votes on available information instead of deferring a decision to another meeting.

Bill Frare moved, seconded by Robert Maruska, to recommend eliminating “if practicable,” from Section 3 RCW 39.10.320(4).

Andy Thompson suggested for consistency considering other similar provisions in other sections removing “if practicable” with respect to the project approval process.

Discussion ensued as to whether the suggestion could be considered as it was not included on the published agenda. Chair Schacht agreed with the proposal but noted the recommendation is outside the published meeting agenda. The PRC’s rules of operation indicate that any determination for project approval is made during the meeting in which it was reviewed. He suggested the CPARB Reauthorization Committee consider the proposal as an issue to address as part of the committee’s work on reauthorization.

A roll call vote approved the motion unanimously.

Chair Schacht reviewed the second proposed change. At the December 13, 2018 meeting, a representative from the National Minority Business Advisory Council (MBAC) proposed a modification to language in RCW 39.10.320. The proposal was adding Section F to RCW 39.10.320 to require the public owner to require the contractor, design firm, and subcontractors to submit inclusion plans after a determination of the successful team. He reviewed the proposal with other industry colleagues and with members of MBAC. The public owner would only have a contract with a successful design-builder. Consequently, the first modification emailed to CPARB members spoke to contract documents that require the design-builder to submit the inclusion plan; however, it is still possible to require all information that was originally intended. Secondly, he modified the language for utilization of the office of minority and women’s business enterprises, certified businesses, veteran certified businesses, and small businesses to align with the proposed changes previously approved by the Board for language in RCW 39.10.330 to ensure consistency throughout the section.

Subsequently, a concern was conveyed by some public owners and some general contractors that inclusion plans used by some public agencies are broader and include other firms beyond certified OMWBE businesses as referred in the proposed language. The intent was advancing a proposal that would accomplish receiving reporting from public agencies on the utilization of certified firms, as well as, non-state public agencies and other state public agencies that might have other kinds of inclusion plans.

Vice Chair Keith reported the Board previously approved a modification to RCW 39.10.330 subparagraph A, stating, “Any contract must require the firm awarded the contract to track and report to the public body its utilization of the office of minority and women’s business enterprises certified and veteran certified firms.” The additional language proposed for RCW 39.10.320 was published but sparked different interpretations. Some public bodies structure inclusion plans differently. The MBAC proposal was intended to ensure that data would be reported on the use of certified firms; however, public jurisdictions use different forms of inclusion plans. The original language offered by DES (Mr. Frare) at the December meeting included language to clarify that inclusion plans should be used as allowed by law. She is proposing new language to RCW 39.10.320(1)(f) reflecting, “Contract documents that require the design-builder to submit inclusion plans for utilization of historically underutilized firms as subcontractors and supplies, including but not limited to office of minority and women’s business enterprises certified businesses, veteran certified businesses and small businesses as allowed by law.”

Chair Schacht invited comments on the proposal.

Frank Lemos, President, MBAC, reported on his close work with Chair Schacht over the last several weeks, as well as with Vice Chair Keith over the last several days. He supports Vice Chair Keith’s recommended proposal with the understanding that agencies have unique inclusion programs. He is also counting on the changes already approved by the Board that enables collection of data from OMWBE firms because MBAC believes the proposed language helps to achieve its goal. MBAC is appreciative of everyone’s time to attend a special meeting.

Rebecca Keith moved, seconded by Bill Frare, to amend RCW 39.10.320(1)(f) to the Design-Build statute stating, “Contract documents that require the design-builder to submit inclusion plans for utilization of historically underutilized firms as subcontractors and supplies, including but not limited to office of minority and women’s business enterprises certified businesses, veteran certified businesses and small businesses as allowed by law.”

Mr. Maruska said he believes the proposed language addresses the concerns he conveyed and would provide clarity to those public agencies that have broader inclusion plans. He conveyed appreciation for the submittal of revised language.

Bob Armstead, National Association of Minority Contractors, expressed appreciation for the efforts by the Chair and Vice Chair to work through the issues. He appreciates the clarification for the reasons for the change and is hopeful that public agencies have plans that are broader and more inclusive than state plans. He supports the efforts by the Board.

A roll call vote approved the motion unanimously.

ADJOURNMENT

Robert Maruska moved, seconded by Bill Frare, to adjourn the meeting at 10:30 p.m. Motion carried unanimously.

STAFF & GUESTS

Bob Armstead, National Association of Minority Contractors
Talia Baker, Department of Enterprise Services
Nancy Deakins, Department of Enterprise Services
Valerie Gow, Puget Sound Meeting Services
Frank Lemos, National Minority Business Advisory Council
Janice Zahn, Port of Seattle/PRC