

CAPITAL PROJECTS ADVISORY REVIEW BOARD

1500 Jefferson Street SE
Presentation Room
Olympia, Washington 98504

DRAFT - Minutes **December 13, 2018**

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

Staff & Guests are listed on the last page

WELCOME & INTRODUCTIONS

Chair Walter Schacht called the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:02 a.m.

Members provided self-introduction. A meeting quorum was attained.

APPROVE AGENDA - Action

Chair Schacht described the reason for the order of agenda topics. He recommended modifying the agenda by adding two non-CPARB legislative proposals prior to the break, moving the report by the JOC Evaluation Committee to follow the Business Equity Initiative briefing, and eliminate the scheduled executive session.

Bill Frare moved, seconded by Brent LeVander, to approve the agenda as amended. Motion carried unanimously.

APPROVE OCTOBER 11, 2018 MINUTES – Action

The following changes were requested to the minutes of October 11, 2018:

- On page 10, revise the second motion to reflect, "...in response to recommendation #3 in JLARC's 2012 Audit."
- On page 10, change "delusion" within the last sentence of the second full paragraph to reflect, "dilution."

Robert Maruska moved, seconded by Bill Frare, to approve the minutes of October 11, 2018 as amended. Motion carried unanimously.

INVITATION FOR PUBLIC COMMENTS

Vice Chair Rebecca Keith invited public comments throughout the meeting.

REPORTS

Project Review Committee - Information

Janice Zahn, Chair, Project Review Committee (PRC), reported on the results of the November 29, 2018 PRC meeting. PRC panels considered six GC/CM projects and one Design-Build (DB) project. All project proposals were unanimously approved by the panels. A GC/CM project application from Walla Walla High School for its renovation project included owner GC/CM experience from Oregon. Additionally, the project's consultant experience included Construction Manager/General Contractor (CM/GC) experience from Oregon. Panelists pointed out that although the project team had some GC/CM experience, it was important the team understood and met the requirements of RCW 39.10. Some project team members also completed AGC's GC/CM training class. Panelists discussed whether the owner and team understood the requirements and considered the differences between the two delivery models. Feedback from the owner and project team convinced the panel that the team understood the differences to satisfy the requirements and deliver a successful project.

A GC/CM project application from Pierce Transit for its Maintenance and Operations Base Infrastructure and Facilities Improvement Project was unanimously approved by the panel. Panelists discussed the phases of the project. The last phase is scheduled for completion in 2030 with project funding provided in increments. The scope of work and the different funding sources resulted in some uncertainty by the panel. Panelists discussed the procurement and RFP for the GC/CM and questioned how the fee would be established when the scope of the project was uncertain. Former PRC Chair Rustin Hall shared his experience with other similar-type projects. Following a review of RCW 39.10 by panel members with respect to the timing of funding, panel members agreed the statute did not require identification of funding for future phases at the onset of the project. Additionally, information was shared on how other owners have worked with the project/legal team to establish terms in the RFP to determine a fixed fee.

A DB application from the City of Snoqualmie for a Reclaimed Water Disinfection Facility Project for \$5 million was the City's first project submittal to the PRC. The interesting project would leverage a DB delivery method because it involves working with the Department of Ecology to comply with newly established requirements for disinfection of reclaimed water in an environment that lacks an identified solution to satisfy Department of Ecology requirements. The City intends to leverage DB subject matter expertise for design and construction. The project cost is below \$10 million and the panel agreed the DB method was the most logical delivery method to assist the owner in designing and constructing a solution.

No owner certifications were submitted for review at the November meeting.

The PRC completed an audit of owner certification expiration dates and identified six owners requiring a correction to their respective expiration date. Letters were sent to the affected owners.

The next meeting is in January. Several owner certifications are anticipated for submittal along with project applications. On average, the PRC receives between five and 11 project applications for each meeting.

Ms. Zahn reported she participated in the Data Collection Implementation Committee by teleconference last month. One issue centered on some additional changes in the project and owner applications to ensure owners comply with GC/CM statute, RCW 39.10; specifically, provisions addressing notification to interested parties. Currently, the applications requests information on any audit findings. A recommended revision to the application speaks to a request to share any issues about previous projects associated with RCW 39.10.

Robert Maruska recommended the PRC should compile a report on the number of DB projects valued between \$2 million and \$10 million as the statute places a limit on the number to be approved. Ms. Zahn said she plans to create a report in a table format to document the number of approved projects between \$2 million and \$10 million Year-to-date, the PRC approved 37 projects. The seven projects approved at the November meeting totaled \$531 million. During the Board's February meeting, an annual report documenting all projects with dollar values will be presented.

Proposed Board Development Committee – Discussion/Action

Mr. Maruska reported the purpose of establishing the committee is to aid in candidate outreach, recruitment, improve transitioning, and educating new Board members on the role, operating procedures, and the scope of the Board. He and Mr. Frare met several times by telephone and identified four tracks:

- A. Candidate Outreach – Board and Committees – *The Governor appoints specific positions on the Board and state associations and other organizations appoint other members of the Board. It is important to have a resource to ensure new Board members can be as effective as possible when appointed.*
- B. New Member & Advocacy Training
- C. Officer Succession – *The intent is to develop a plan to improve and identify a process for transitioning between officers within a structure to include the transference of knowledge between positions.*
- D. Legislative Process – *Convey information to the Board on the legislative process, how the Board works with the Legislature, and the extent to pursue legislation supported by the Board.*

Mr. Maruska invited comments on the proposed outline for the committee.

Andy Thompson recommended adding PRC awareness as the Board oversees the PRC. It would be important for new members to understand the responsibilities of that committee.

Lisa van der Lugt asked about the frequency a member of the Board might interact with the Legislature. She agreed to the importance of all members understanding the legislative process but questioned whether spending time on how bills are codified was necessary. She asked whether more time should be dedicated to candidate outreach as the Governor's Office often seeks input from the Board to help identify potential members. It would be helpful to understand the expectation of members to pursue Board-approved legislation. Mr. Maruska said that as a former chair for many years, many members testified for different bills. Although the chair speaks for the Board, members also represent different constituents. Members often met with legislators and directly supported CPARB bills. Those occurrences were frequent and regular dependent upon the bill and the issue. It is important for members to understand the process while acknowledging organizations represented by members have a different process. Ms. van der Lugt asked whether the chair is the only member who can speak on behalf of CPARB. Nancy Deakins replied that the chair and any other person designated by the chair could speak on behalf of the Board.

Mr. Frare added that the proposal is to ensure new members receive some structured and comprehensive training to assist in increasing the effectiveness of each member.

Steve Crawford commented on the importance of all members understanding the legislative process because a critical component of bill making is the last step. If the last step were not successful, all the work invested up to that point would be wasted.

Chair Schacht invited public comments.

Aleanna Kondelis, University of Washington, commented on the importance of members interacting and supporting their respective constituency. She recommended considering some ideas or engaging in discussion with previous members regarding constituency engagement and representation of those groups.

Frank Lemos, President, National Minority Business Advisory Council (MBAC), reported he and Bob Armstead have been active participants with the Board since 2010. The proposal appears to have been prompted by some of the influence the MBAC has had on the Governor's administration regarding the importance of the Board, as it is integral in decisions surrounding contracting. The minority community and women-owned businesses need to have more input. His concern with the proposal is creating yet another barrier especially as it relates to the desire for members to gain lobbyist experience. He questioned the responsibility of the Board to offer training videos or information for those that cannot afford to travel to meetings. Many are business owners that lack the resources. Many of the individuals represented by the Board have few resources. It is critical for the Board to study the impact a new committee would create as a barrier to

those that are trying to compete in this space and are striving to have their voices heard. Secondly, he questioned whether the committee would be pulling leverage and decision-making from the Governor's Office and transferring it to the Board. The state has an assigned individual in charge of boards and commissions. That individual receives instructions from Executive Staff and the Governor. He views the committee proposal as overshadowing the responsibility of the Governor's Office. He understands the reason for the proposal especially because during the last six years, new members have been appointed who have never been exposed to contracting legislation. However, requiring lobbying experience, understanding the legislative process, and meeting with legislators appears to reflect that some of the contracts released from the state base contracting awards on experience. Most minority businesses have no experience, which speaks to how those companies can ever compete. Requiring members who make the decisions for the future for all communities to have experience specific to lobbying, legal contracting, and experience from projects only means it would automatically exclude a large portion of the communities represented. Most importantly, the Board was created by the Governor and the Legislature. The proposed committee would dilute visibility.

Mr. Frare spoke to the purpose of the Board Development Committee. The proposal is not intended as a barrier for anyone to join the Board because as a member it is important that Board members receive the training on the job in order to be the most effective. He does not view the proposed committee as a barrier, but rather it would be a benefit to the individual to enhance their experience, as well as become more effective in representing their constituents they are appointed to represent.

Ms. van der Lugt remarked that she understands the concerns conveyed by Mr. Lemos. Not mentioned in the proposal is recruitment of people of color and minority businesses. The Board expends little time discussing those issues. She suggested incorporating language and actions that speaks to more outreach and inclusion.

Bob Armstead, Washington State Civil Rights Coalition, said his organization is comprised of 37 community groups, including the Washington State Ministerial Alliance. He echoed the statements of Mr. Lemos, as well as Ms. van der Lugt. The Board was appointed by the Governor who established certain rules and guidelines for how agencies and boards within the state should operate. The Board, at times, does not follow those rules and guidelines.

Mr. Crawford emphasized that the proposal was not intended to be a barrier or exclude, it is intended to provide for outreach and training to bring new members up to speed quicker to become more effective to avoid spending a period of their early participation learning about the process. The proposal is a positive step to enhance the outcomes of the Board.

Mr. Maruska reviewed the proposed membership of the committee comprised of the Chair and Vice Chair, PRC representatives, minority and small business owners, and other individuals interested in participating. He shared the slate of proposed members:

1. Past CPARB Chair/Vice Chairs
 - Bob Maruska/Bill Frare/Andrew Thompson
2. Current or Past PRC Chairs
 - Linneth Riley Hall/Janice Zahn/Rustin Hall
3. Minority/Small Business Owners
 - Irene Reyes/Mike Shinn

Greg Fuller asked to be added to category #3.

Chair Schacht addressed concerns surrounding the proposed as an attempt to make the Board exclusionary. The request for more training for new members was initiated during the September Board meeting from a woman minority business owner who conveyed her wish for a Board training program because it would be very helpful for her. Subsequently, the Executive Director of OMWBE conveyed a similar request to help her understand the business of the Board. The proposal is in direct response to those comments and from individuals who want to be more effective in representing their constituencies. Any discussions about being helpful to the process of identifying perspective Board members has been expansive as the goal is to ensure all members represent to the broadest extent possible, their stakeholders in the

communities they represent. As an architect, he has two obligations as a Board member. One is representing all architects in the state and the second is to the state as a whole. The proposed outline specifically addresses the need to have the most informed and effective Board members, which includes diverse business participation by providing a foundation to help people be effective. The succession plan speaks to the idea of rotating leadership to provide opportunities to more people to play a leadership role and to connect more effectively to the stakeholders represented.

Chair Schacht added that the Board is scheduled to discuss action on forming three committees with significant responsibilities. As a volunteer organization with a limited number of members, it is important to consider the commitment requirements to a committee and the importance of participating regularly. He urged members and the public to be thoughtful about their personal commitment on behalf of the Board and all stakeholders.

Mr. Armstead expressed concerns about the Chair's statement as to representation. The Chair conveyed that his first obligation is to represent his contingency rather than the state. The priority should be reversed as the primary reason for the Board is to represent the state and then as a point of view, their respective organizations. If the organization is first, then the needs and the desires of the state would be second, which he contends is not accurate.

Ms. van der Lugt said that when the Board's discussions center on diversity or inequality, she also has many similar conversations on a regular basis with others who have never been affected by inequality. She does not question any member's intentions, as she knows Mr. Frare and trusts his work. However, when asked to provide comments, she will not hesitate to offer comments on some of the impacts of the Board's efforts as she views them or has experienced. She is not questioning the Board's intent, but there are others who are sharing with the Board the impact of the Board not acting.

Bill Frare moved, seconded by Bob Maruska, to establish a Board Development Committee and amend the Charter to include the comments offered concerning constituency representation and being in alignment with the Governor's Boards and Commissions and outreach and inclusion. Motion carried unanimously.

Mr. Frare, Ms. van der Lugt, Mr. Fuller, and Mr. Maruska volunteered to serve on the committee.

Chair Schacht invited members of the public to consider joining the committee as the committee composition should be between 10 and 14 members. Mr. Frare said the committee's proposal included seeking members from the PRC. He recommended the volunteers should meet and finalize a recruitment list with assignments to solicit other members.

Chair Schacht reminded the Board that all committee meetings are published and open to the public. He encouraged posting of the meeting schedule on the CPARB website to enable interested citizens an opportunity to attend and participate in the meetings.

Mr. Maruska recommended adding a fifth member by appointing Ms. Zahn as the PRC Chair to serve. Ms. Zahn affirmed her interest in serving on the committee.

Bill Frare moved, seconded by Andy Thompson, to nominate and appoint Bob Maruska, Bill Frare, Lisa van der Lugt, Janice Zahn, and Greg Fuller to serve on the Board Development Committee. Motion carried unanimously.

Proposed Reauthorization Committee – Discussion/Action

Vice Chair Keith referred members to the pre-read on the proposal to form a Reauthorization Committee. The information conveys the amount of the work and effort required to pursue reauthorization. Although the request is included on the agenda as an action item, the recommendation is to defer action on appointing committee members until the February 2019 meeting because of some comments and input she received from individuals involved in the prior reauthorization process. The timeline targets presenting a reauthorization bill to the Legislature during the 2021 session. Timing of the previous committee depicted approval of the proposed bill in 2012 with the bill introduced during the 2013 legislative session. The Board authorized the committee in December 2011 with work beginning in April 2012. This schedule affords an additional year, which will benefit the process. Input from Ed Kommers and Mr. Maruska, a review of previous minutes, and the JLARC report pointed to a condensed schedule for the previous reauthorization. However,

affording too much time may result in additional work. Input pointed to the need to have a pre-established schedule and meetings dedicated to specific topics arranged by sections within the statute. A prearranged schedule enabled members and others to attend meetings when specific topics were discussed enabling more focused and effective discussions. It also was helpful to ensure all proposals were submitted in written form to enable members to identify issues to discuss more effectively. The size of the prior committee included approximately 20 individuals with approximately half of the membership from the Board.

JLARC serves as an audit function in performance of the statute and the CPARB. During previous reauthorizations, JLARC submitted recommendations for changes to the statute. Although, the Board is not involved in those recommendations, the Board should be prepared to respond to the proposed changes, as well as responsive to recommendations from the JLARC report in September prior to reauthorization.

Vice Chair Keith proposed that the Board appoint committee members during the February meeting for several reasons. The report from JLARC was not available until recently, members and others need time to consider the proposed work plan and personal commitment, it will be important for individuals to consider how to include others in addition to members from the Board, and ensuring stakeholder representatives are included from each group. It would also be helpful for everyone to be prepared to offer nominations at the next meeting. The first task of the committee should be to organize, establish a meeting schedule, elect the chair and vice chair, and review the last JLARC Report and recommendations. Over the summer, the committee would establish the schedule for each topic area with meetings to begin in September 2019 affording a year to develop a draft bill for presentation to the Board in September 2020. The timing would enable the Board to review and provide feedback and vote on the proposal for advocacy beginning early 2021.

Vice Chair Keith asked the Board to consider membership of the committee. She recommended including not only OMWBE representation, but also representation from small business and minority businesses, as well as a representative from Sound Transit and other potential members who could offer expertise in other areas. She asked whether the Board should incorporate reauthorization-related tasks and other committee goals, such as data collection goals, as the efforts of the Reauthorization Committee will likely span the work of the other Board committees as well.

Mr. Kuruvilla asked whether prior efforts for reauthorization offered any lessons learned or methods that should be pursued differently. Mr. Maruska responded that the prior reauthorization committee efforts spanned approximately one year. Membership on the committee requires a firm commitment and time. The process considered all stakeholder issues with respect to provisions in the statute that required an overall examination of the statute and how various changes might impact outcomes. That process takes time and is labor intensive. He served as chair of the committee and Mr. Kommers served as vice chair. Mr. Kommers created an effective tool using a spreadsheet for each section to capture all comments, proposals, and issues. The committee maintained a status report on each topic to track progress and outcomes. At the end of the process, the committee worked through a consensus process to draft proposed legislation. In some cases, ideas or proposals that could not be resolved were excluded from the proposed legislation or were carried over for another effort. The tools assisted the committee in remaining on task while documenting all input. Some challenges encountered by the committee included attracting attendance by topic matter experts. The process should provide a forum to receive everyone's input while working through a structured process to track all input, ideas, and suggestions.

Mr. Crawford said the prior reauthorization process included many robust conversations and much information and many viewpoints were exchanged resulting in a good outcome. Starting the reauthorization process early will lead to an orderly plan and approach.

Mr. Thompson asked whether the previous effort resulted in changes to the statute or were the changes prompted by the recommendations from JLARC. Mr. Maruska replied that during that period, the Board and the committee considered the entire statute. Some language revisions were recommended for many sections. The draft bill included changes recommended by CPARB. When the JLARC Report was released, the committee reviewed the recommendations to ascertain whether additional changes were required to the Board's draft legislation. Because of the timing of the process, the committee will encounter a similar situation with respect to reviewing recommendations from JLARC; however, it is

important to begin the homework early and draft a bill with all input for submission in the event no changes occur because of any JLARC recommendations.

Mr. Thompson asked whether CPARB's bill included significant changes to RCW 39.10. Vice Chair Keith advised that CPARB approved the legislative bill in December 2012 and submitted it to the Legislature in early 2013. Mr. Maruska added that the legislative process included some refinements but not an entire rewrite of the proposed legislation. Some changes were recommended through the legislation process by some people who had particular issues.

Vice Chair Keith conveyed appreciation to all individuals involved in the prior reauthorization effort. She appreciates the input she was able to obtain from many individuals. The committee would also likely want to address how to ensure the meetings are accessible and the location advertised.

Mr. Kuruvilla asked about the size of the previous committee and whether membership was comprised primarily of CPARB members. Mr. Maruska said no more than 10 CPARB members could serve on the committee to avoid a meeting quorum. A number of CPARB members served on the committee. A core membership group included approximately 8 to 10 individuals. As each topic area was addressed, attendance varied with other attendees. Near the end of the process, the entire membership met to review the final proposed changes.

Mr. Kuruvilla offered that there might be some merit in reviving the spreadsheets to provide some back-up information. Vice Chair Keith supported the recommendation.

Mr. Maruska recalled that on several occasions it was not possible to complete an entire section at one meeting. In those instances, the committee focused on subsections within a section because of the realm of the provisions.

Ms. Deakins offered to forward the Board a copy of the legislation: House Bill 1456. Following submittal to the Legislature, some changes occurred to the bill. Staff may also have summaries of the bills for the Legislature that might be helpful for the committee.

Mr. Maruska said it speaks to a good example where there was quite of bit of change. The discussions surrounding the changes entailed many hours. In the overall scheme, the changes affected the DB statute as it clarified some of the provisions but essentially the overall statute was unchanged.

Chair Schacht said DB is a good example as it changed costs and price-related factors. Progressive DB was recognized as a delivery method through the reauthorization, as well as the pilot project of \$2 million to \$10 million projects. In some areas, there were some substantive changes.

Mr. Lemos said he's addressed this issue each year. If the Board is planning to prepare, as it appears likely to do, he understands the need for organizations to provide input. It is fantastic that the Board is starting the process this soon; however, one issue that is never answered is the interpretation as to why the Board was created. As he understands it, the Board was created because agencies wanted to be more creative with taxpayer money for completing projects. Based on testimony at that time, legislators understood that it was giving the Board a lot of power. Much of the current language was to ensure that voters and taxpayers were protected. He has heard many times from the Board leadership in private conversations that they are volunteers and they do not have the authority not to certify. He questioned how agencies could be certified if the Board is not collecting data that prove alternative public works contracting is benefitting the public. He cited the analogy of grading a student without having seen the benefit of the student's work. It is actually ridiculous as a taxpayer that the Board has not taken much responsibility in that area, and has, in fact, almost refused to collect data and now the Board has a JLARC Report, which the Board has interpreted to mean the Board does not have to collect data. During the next three years, it would be important for him, Mr. Armstead, and others to be onboard with the Board to get this body to be recertified. He believes the Board should take his concern to heart as he plans to be involved during 2020 through 2021. Beyond his inclusion concerns and as a taxpayer, he is very upset that the Board does not take its statutory responsibly serious enough to really understand its authority, which is to certify and decertify. By not checking records or collecting data, the Board is not fulfilling its responsibility. He questioned why recertification exists in the first place if

The Board does not act to decertify an agency that is choosing alternative works in a fashion that is not benefitting the public. He warned that if the Board wants to continue to exist and engage in that process without a lot of public pressure, he believes those questions need to be addressed in the next several years. It is pretty plain and simple to him as a taxpayer, that the Board exists to mandate and have influence on alternative public works contracting over those that want to be certified. Therefore, if the Board has that power, he asked how the Board could exercise the power without collecting data.

Irene Reyes asked whether the founding members of RCW 39.10 are still alive. Mr. Maruska affirmed the authors are still alive. He clarified that there were two elements as Ms. Deakins was also involved. Ms. Reyes said she spoke to one of the legal counsel authors who conveyed that the legislation was initiated by Seattle Metro when it was facing a takeover by King County Metro. The Seattle group created the RCW before King County Metro took over. As a result, all public agencies follow the same template and the same guidelines so that tax dollars are not abused. Tax dollars are not spent unwisely. That is why this legislation was created. She would be happy to invite the individual to the next meeting to share more details. The individual is a construction attorney and a civil engineer. She has conveyed that they have made it so complicated today because it was a simple thing to protect tax dollars and police government agencies as to how they expend tax dollars.

Mr. Maruska added that he would be willing to share some history on the legislation. Many discussions have occurred over the years about regulatory function and whether the Board was intended to be the regulator. The original action involved a bill concerning a convention center initiating a GC/CM project. It was a separate bill in the Legislature, and from that bill, other pieces were attached eventually leading to the creation of RCW 39.10. An interim bill followed the convention center with the understanding that much work needed to be completed. That occurred during either the 2006 or 2007 session when it was rewritten to reflect the current RCW 39.10 that was reauthorized in 2013. For years, public works has been very complex and legislators were providing feedback during the same timeframe about better ways to adopt public works legislation. The intent of the Board was to convene all parties to work together to iron out details of proposed legislation to enable the Legislature to consider and adopt knowing that all the parties had been involved in the process.

Mr. Reyes said she is puzzled as to why all agencies must be protected because the bottom line is tax dollars, which should be spent wisely. Mr. Maruska said it was one of the fundamental elements in drafting RCW 39.10 with alternative public works because agencies had not completed projects using alternative delivery methods. Major emphasis was on how to ensure that those agencies using alternative public works are successful and conducting the projects appropriately. The original bill included many more prescriptive elements such as whether the owner had the qualifications and the experience to pursue alternative project contracting. Today, the PRC continues to use that criterion to determine whether the owner has the expertise to implement an alternative procurement. The Board and the PRC never judge whether the project is appropriate, but rather considers whether the owner is qualified and that the public would be protected and that the project would be successful using the procurement method.

Chair Schacht remarked that any person participating as a member of the Board and the public benefits from knowing about alternative procurement methods through CPARB. He recommended the Board Development Committee produce a document for posting on the website to provide information about the origin of the Board, examples of authority, relationship of the Board with PRC, and how the statute has changed over the years. He added that over the course of his membership on the Board, he has gained an appreciation of the Board's work, imperfect though it may be. He is uncertain whether the Board could produce quantitative data demonstrating the public would be damaged by eliminating alternative works delivery methods. However, those involved on a daily basis on capital project procurements would attest to the improved outcomes and projects, and that there are opportunities to improve outcomes in terms of final results, participation, and the use of limited dollars. The Board is unique by bringing together representatives from the industry and the public to engage in conversations. No one was having those conversations and no one else today is having those conversations about Design-Bid-Build, which represents the vast majority of public dollars spent. The Board may be imperfect, but a dialogue is occurring that did not exist anywhere else, which is helpful to everyone regardless of their perspective. Finally, CPARB should have some mechanism for outreach that provides all industry interests (public owners, design professionals, contractors, small and medium and disadvantaged businesses, and other

entities) with an opportunity to share their experience with alternative project delivery and what they believe is working and not working or might be missing. He suggested the Board should travel to where stakeholders are located to include eastern and western Washington. It is important to conduct meetings with the public prior to convening workgroups. He cited his recent participation on a design panel and how none of the 110 attendees involved in the industry as marketers for capital projects were aware of the Board's existence. Many were familiar with PRC but not the Board. It would benefit both the Board and the public if everyone was aware of the Board, what the Board does, and where the Board is located. He urged the Board to consider more outreach.

Vice Chair Keith noted that her report mentions consideration on how the work of the reauthorization overlaps with the work of other Board committees or workgroups. It could entail the committee recommending an outreach effort to determine interest in reauthorization and then develop a communications plan. She invited members to consider those efforts and some solutions at the February meeting.

Proposed Education /Outreach Committee – Discussion/Action

Mike McCormick said the last discussion has created some intimidation in proposing another committee that will entail additional work. However, education and outreach is important in the context of the previous discussion. The draft proposal was developed after several meetings with Olivia Yang, Nick Datz with Sound Transit, and Dan Seydel with Entrepreneurial Institute of Washington (EIW). The group believes alternative project delivery provides great potential to benefit the taxpayer in multiple ways by delivering more value into the projects and including disadvantaged businesses. The best opportunities are found in alternative public works, which is why it is important to ensure the entire industry is much better educated about the delivery methods. Many organizations speak to alternative delivery methods by offering training programs. Some of those programs include participation by CPARB members. Rather than having the Board create an educational process, the recommendation is partnering with other organizations currently offering training programs. Committee members would partner with organizations and create a feedback loop to ensure the programs are based on RCW 39.10 and feedback is provided to the Board on best practices. The work of the committee would essentially entail liaisons between existing programs and the Board. An initial step is inventorying existing training programs for the different delivery methods. Many training programs include mentorships and helping minority and disadvantaged businesses. A number of programs are emerging for mentorship training. The Washington State Department of Transportation is one example of an agency offering a mentor protégé program. More of those programs are being established with the University of Washington establishing a similar program. The programs offer a combination hands-on learning with classroom instruction. A list of those programs could be included on the Board's website with descriptions of the programs and expected results from participation. The committee's initial efforts would focus on inventorying existing programs and participating in the programs to help shape the programs and share best practices with the Board. Another important task is creating a charter for the committee.

Chair Schacht said an important audience for the committee is public owners. Participation by the Board during the DB training sessions with AGC included information on encouraging competition. Elisa Young with OMWBE and Ms. Zahn teach a segment with a focus on public owners by sharing information on how to develop RFQs and RFPs for opening doors to firms that have never competed for DB projects. In some ways, owner education is as important as any other aspect especially if the Board wants to improve the quality of the delivery methods. The industry experiences a substantial variance in public owner knowledge, capability, and understanding of all aspects of procurement. The Board could improve fairness to those competing for the work and those who are awarded the work. He would like the committee to focus on public owners, as well as others as they are an important part of the equation. The question is whether the website hosted by DES has the capability to offer a portal for all training programs. It likely would require a conversation with DES to improve the website for public access.

Mr. Frare responded that the Marketing and Communications Division within DES manages the website and can provide flexibility in terms of how the information is presented. Scheduling a conversation with division staff to modify the site to meet the Board's needs would be possible.

Mr. Maruska inquired about the expectations for each member of the committee. Mr. McCormick said the initial concept is inventorying all existing training programs and participating in the programs. Each committee member would be

tasked to attend some of the training sessions to share best practices information with the Board, as well as influencing the training program and connecting with industry groups. Another area of discussion was the importance of having well-educated owners for best practices and whether that information is incorporated within the certification process. The group recognized some pros and cons which require more discussion. It is important during the certification process that owners have experience and also understand what best practices are occurring. Those training mechanisms would be helpful to that process.

Ms. Zahn commented that as one of the instructors for the AGC Design-Build training workshop, the question about the role of CPARB in training is interesting as there are many owner subcommittee meetings and forums. The Design Build Institute of America (DBIA) hosts an owner subcommittee with periodic meetings. She questioned the role of CPARB with respect to a committee focusing on education or creating partnerships with AGC, DBIA, and others currently engaged in training programs. For example, the DB training was possible through a partnership with AGC to enable the venue and to create the workshop structure. She asked the Board to consider as it moves forward on education whether it would be a new area of focus or whether partnering with others who are the portals would be a better option.

Mr. McCormick affirmed the group's proposal is not to create a separate training program but to pursue partnerships to take advantage of all available training offered within the industry.

Chair Schacht asked whether the group identified perspective members of the committee. Mr. McCormick advised that because of the level of participation, volunteers would be the next step rather than offering nominations.

Ms. Reyes agreed with the direction for the committee. However, the most important aspect of the effort is community engagement by the Board. If the Board is not engaged with the community, efforts on education will fail.

Chair Schacht asked for volunteers from the Board to participate on the committee. He identified the initial focus of the committee as working with DES to establish a website to serve as a portal to other entities. Once the list is propagated properly, the list would be self-sustaining. A broader focus could include quarterly outreach across the state to discuss issues and share lessons learned. Several years ago, Mr. Kuruvilla introduced the concept of hosting a lessons learned conference. He is still unsure as to whether the committee should focus on the more narrow tasks.

Elisa Young, OMWBE, reported OMWBE has launched its Business Assistance site. One of the Board's findings speaks to the increase in participation by disadvantaged businesses and although the Board will need that information on the CPARB website, OMWBE's website is a one-stop shop for small businesses that is also embedded in the agency's business side as well. Current OMWBE partnerships do not create much access to small businesses. It should be a priority that as partnerships are established, the costs are discussed as well. The expense of training is difficult for many small businesses. Working to increase partnerships should include ways to increase affordable accessibility.

Chair Schacht said the negotiations could include the option of including some scholarships for small and diverse businesses. In some cases, it might be possible to develop a scholarship program to eliminate the cost of participation. Ms. Young added that OMWBE has worked with AGC to decrease the membership for small businesses. Ms. Young affirmed her interest to participate as a member of the committee.

Mr. Crawford shared that when the Design-Build Best Practices Guidelines was formed, he considered his participation as a good opportunity to establish best practices to assist many school districts interested in using DB. The outcome has been successful with many school districts pursuing DB for projects. He volunteered to serve on the committee to benefit school districts and to ensure public agencies have a better chance of success using alternative delivery methods

Mr. Kuruvilla offered that although the Board Development Committee has an internal focus, the education committee is more externally focused on building relationships and sharing lessons learned. He asked about the possibility of combining both committees with the educational efforts an external aspect of the Board Development Committee's responsibilities to include the scope as proposed by Mr. McCormick.

Mr. Maruska recalled that in 2006 or 2007, the Board established two committees. One was an Expansion Committee and the second committee was an Implementation Committee. All issues surrounding expansion were the responsibility of the Expansion Commission with other issues directed to the second committee. That two-committee approach was difficult because of the multiple elements of focus within the committee. Over the years, the Board achieved success when a committee's focus was narrowed, as it increased participation and improved the effectiveness of tackling a narrower scope of issues, which is why the Board began creating separate committees. The issues could be combined with a general committee; however, having some experience with that process, it was more difficult for the committee because of the number of issues. Meetings are limited in time and prioritization is often difficult with so many competing issues. Smaller committees with a defined and narrow scope are much more effective based on previous experience.

Shari Purves-Reiter, Washington State Department of Labor and Industries (L&I), volunteered to serve on the committee. The Department offers training for awarding agencies, contractors, and public works. Current training is focused on the new responsible bidder training for public works to ensure experience and time in business. Companies lacking that experience can attend required training in July. All the new requirements impact all customers and constituents.

Chair Schacht affirmed the importance of the Board Development Committee especially as new members are appointed each year. Board members agree the Board has not done a good job in preparing members to be effective and active. Implementation of the Board Development Committee should not be deferred, particularly during the year of reauthorization. It might be possible to establish the Education/Outreach Committee with a narrower focus of developing the web portal to encourage partnerships between the Board and all industry constituents. The second task could include outreach across the state.

Mr. McCormick supported the recommendation. Each Board member is familiar with different aspects of training. The first task is opening that door and connecting CPARB's efforts to existing programs.

Discussion ensued on whether the Board should establish an Education/Outreach Committee. Mr. Frare advocated for establishing a workgroup as the efforts will be technical for accessing existing systems and would not involve developing policy or proposed legislation. A small workgroup supplemented with DES resources should suffice followed by a report to the Board for transparency.

Chair Schacht suggesting framing the recommendation as a volunteer activity as the Board's bylaws do not recognize workgroups. Following the work of the volunteers, a report could be provided to the Board to ensure transparency. He cited initial volunteers as Mike McCormick, Bill Frare, Elisa Young, Steve Crawford, and Shari Purves-Reiter with staff resources provided by Talia Baker.

LEGISLATIVE PROPOSALS

Counties Proposal – Briefing/Feedback

Jane Wall reported current statute applicable to counties include bid limit thresholds. For counties with a population of over 400,000 people, the threshold is three million two hundred fifty thousand dollars. One provision (Section 7) calls out electrical illumination equipment, such as stop lights and stop signs with a small project threshold of \$10,000. Feedback from the counties has indicated the threshold has not kept pace with inflation and that type of work cannot be performed for less than \$10,000. The proposal is to eliminate that provision within the statute as it is somewhat unique because it speaks to specific equipment. The counties are moving forward with the proposed revision. She has reached out to contractors and to the electrician's union but has not received any feedback to date.

Mr. Maruska commented on not receiving an advance copy of the proposal. Ms. Wall offered to forward a copy of the proposal to the Board. Mr. Maruska said that previous bid limit discussions by CPARB have been an issue of interest. Since he did not receive a copy of the proposal, it would be difficult to offer any meaningful feedback other than bid limits have been of significant concern.

Mr. Riker shared that he represents electricians and asked Ms. Wall to include him on the distribution list. Other entities are considering similar proposals and they have reached out to the Washington State Building and Construction Trades Council. He would prefer to coordinate all those efforts.

Dan Seydel asked whether there would be an opportunity to share comments and concerns about the proposal.

Ms. Wall offered to share the information. Additionally, should the bill move forward during the legislative session, all activities would be open to the public.

Ms. Deakins cited the statute as RCW 36.77.065, regarding county forces construction and programs. The change is to paragraph 7.

Chair Schacht reminded everyone that any pre-reads or materials for the Board should be emailed to cparb@des.wa.gov.

National Utility Contractor's Association of Washington (NUCA) Proposed Legislation – Information/Discussion

Brett Hill, Ahlers Cressman Sleight PLLC reported he is seeking input on a proposal National Utility Contractor's Association (NUCA) is pursuing. It is anticipated the proposal would be supported by AGC. The proposal concerns bid protests. Currently, when a contractor protests an award, the protest must be submitted within two days after bid opening. If the submission is timely, the public agency must provide notice two days prior to signing the contract. The contractor's only remedy in a bid protest is to stop the signing of the contract. Once the contract is signed, the contractor has no other remedies other than filing an injunction with the court to halt the signing of the contract. Some owners have been taking advantage of the timeline by making it very difficult for a contractor to submit a protest by not providing other competing bids. The contractor must have a copy of competing bids to determine whether to submit a protest. If the contractor requests the bids, most owners provide copies of the bids during the bid opening. Some owners conduct the bid opening and announce the awarded company but do not provide a copy of the bids when requested. The proposal requires public owner to provide copies of bids within the two-day window, and would be unable to award the contract for those two days. The proposal is a fairness issue. The statute was originally enacted in 2003. A second change is to RCW 39.10.380 for bid protests procedure on GC/CM procurements. An interpretation by a judge of the statute stipulated that if the protest was not submitted within two days, the contractor waived the right to protest. That situation was not intended but the language was included when the GC/CM bid protest procedure was drafted. The proposal clarifies that the GC/CM must provide a two-day notice if the protest is filed within two days.

Additionally, another change to RCW 39.04.105 applies to municipalities. Some public owners do not follow bid protest procedures because the agency does not believe it is a municipality. Specially, a port in the state assumed that position. The proposal would clarify that the statute applies to any public agency.

Mr. Hill invited comments on the proposal.

Mr. Maruska said he supports what the proposal is attempting to accomplish. The documentation, however, is somewhat confusing as the first proposal speaks to copies of all bids followed by providing copies of the bids. The proposal should be clarified as to the request because many owners have bid packages. The issue is whether the request is to include other materials, such as bid bonds and other bid documents. There are significant differences between a bid package, bid summary, bid tabulation, or unit prices. He recommended providing more specificity for the material request and questioned whether an option for municipalities to post bid summaries within 24 hours of opening the bids was considered as it would be a simpler solution.

Mr. Hill said the suggestion is a good idea. Part of the concern was avoiding a burdensome process; however, if based on experience that would not be burdensome, he could support alternative language requiring the posting of the information as part of the bid opening.

Mr. Frare and Mr. Fuller supported the recommendation. Mr. Fuller said his experience with bidding has been a lack of information not released in a timely manner.

Mr. Maruska referred to the proposed change to RCW 39.10.380. The Board spent considerable time negotiating the language with AGC and wants to ensure any proposal retains the integrity of the language. Mr. Hill shared that discussions are ongoing with representatives from AGC to guard against any unintended consequences. It appears the language was not intended to create a different cut-off than the same provisions contained in RCW 39.04.105.

Joaquin Hernandez encouraged Mr. Hill to review federal procurement laws on protest actions. Two days is not sufficient to evaluate whether there is a basis to protest an award. The new Department of Defense (DOD) policy provides a losing bidder or proposer with more information to reduce the likelihood of a protest. He suggested increasing the time, as well as adding a procedure whereby some information is disclosed timely for bidders to determine if there is a basis for a protest while protecting the successful bidder's information.

Mr. Hill noted that some public owners want to initiate procurement sooner rather than later. He asked for feedback on potentially extending that process.

Mr. Maruska said that the existing language within the statute involved many discussions and negotiations surrounding timing.

Ms. Reyes echoed Mr. Hernandez's comments. Bid contracting is important for her business. The timeframe for protests is very short. Both DES and the federal government have good protest procedures that also protect the winning bidder.

Chair Schacht recessed the meeting from 10:24 a.m. to 10:33 a.m. for a break.

Disparity Student Update – Information/Discussion

Chair Schacht commented that many of the agenda topics and issues were grouped purposely because they are interrelated. During the September Board SWOT exercise, he anticipated more discussion about business equity and diverse business inclusion. However, the outcome did not focus on those issues. As part of discussing details around data collection, modifying statutes, or introducing new legislation, the Board should step back and review duties and powers and understand that the procurement side of alternative project delivery is part of a larger set of actions. All members should have a better understanding of how all those moving parts come together.

Chair Schacht invited Ms. van der Lugt to provide an update on the progress of the study by the Governor's Business Diversity Subcabinet.

Ms. van der Lugt reported that over the last several years, DES, under the leadership of Rex Brown has convened stakeholder workgroups and action teams. The Disparity Study is scheduled for release in late January or early February. Mr. Brown has been effectively engaging agency directors, stakeholders, colleges, and other organizations for feedback on the best ways to move forward. Because of the study, OMWBE appointed Ms. Young as the Assistant Director for Supplier Diversity to align with the time commitment required for the study. She introduced Rex Brown, Administrative Director for the Governor's Subcabinet on Business Diversity.

Mr. Brown briefed members on progress of the Diversity Study. The Governor appointed the Subcabinet to improve participation by small minority, women, and veteran-owned businesses in state contracting in 2015. Since the passage of I-200 in 1998 and codification of RCW 49.60.400, a precipitous drop occurred from a high of 16% utilization of minorities and women businesses to less than 1% in 2014. The Subcabinet was established to address the issue of the impacts to those vulnerable populations.

Mr. Brown referred the Board to a Report on Progress and Next Steps published in January 2018. The report serves as a status update on the work completed to date. Because the work was complicated, the Subcabinet convened a workgroup comprised of agency deputies, delegates, designees from public works contracting, and technical teams to help define the body of work to complete. The effort was organized into several tracks. The tracks include Measurement Framework, Improve Certification Experience, Technical Assistance, and Community of Practice. A track for Legal Clarification sought

an opinion from the Attorney General, which was issued on March 20, 2017. The first draft of the Disparity Study is scheduled for release on January 31, 2019.

The AG's Opinion indicated that addressing the negative impacts to the communities of minorities, women, veterans, and small businesses should follow a specific path. That path includes establishing that a disparity occurred in the state. The process to establish the disparity began two years ago. The second clarification cited that if there is a disparity, the state should attempt to resolve it through all voluntary measures that are both race and gender neutral. If those measures fail, then race and gender conscious efforts may be used. If those measures fail, a period of mandatory goals would be established. The actions are not permanent and are only intended until the negative impact causing the disparity has been addressed. If a disparity has been determined, next steps will include some measures.

An incredible amount of information has been received to date with many state procurement professionals verifying information submitted by contractors. Hundreds of millions of dollars in contracts were obtained from the contracting community, which speaks to why the first draft will be released in January 2019.

Populating the Measurement Framework was completed in January 2018 and included information other than percentage of spending information to include dollar amounts, numbers of contracts, how the state is progressing, and improvements to OMWBE certifications.

Ms. Young added that in addition, the OMWBE implemented in October 2017 an online certification process, as well as aligning state and federal certifications in one application and removing unnecessary competitive language in the application. Those efforts continue to be an ongoing process.

Mr. Brown reported the Community of Practice was launched in February 2018. The Practice is important because of voluntary measures occurring in that specific group. The next area of Technical Assistance includes a small business assistance site on OMWBE's website. Ms. Young added that one of the barriers identified was information for small business located on numerous agency websites making it difficult for businesses to access. A website was created to address that barrier.

Mr. Brown noted that in addition to areas reviewed within the Disparity Study related to construction dollars and capital projects, goods and services were analyzed, as well as client services as the economy moves from manufacturing to a service economy.

Mr. Hernandez asked about the level of detail within the study with respect to the history of capital projects and construction activities. He asked whether the study was focused generally or whether the study also considered delivery methods as the Board is focused on delivery methods. Mr. Brown said the level of detail within the study is extensive. The Disparity Study covers 31 state agencies and two four-year educational institutions. The three market areas are not identified by specific agency but the different markets within the three areas will be documented. Some of the recommendations may address delivery methods. However, that is determined by the Disparity Study consultant. A period of feedback will be offered to ensure the correctness of the information based on agency participation. An informational meeting is scheduled on February 20, 2019 with the contractor providing details on the in-depth analysis of the results.

Mr. Brown reviewed the status of efforts by the Community of Practice Action Teams. Part of the effort by the state is collecting fragmented participation in the different kinds of culture and experimentation throughout the state and bringing them into a more centralized and standardized format. The reason for this effort is because the state tends to experience fits and starts in improvements and often when that happens people frequently become inert to change and the state is unable to achieve any advancement. In this case, a systemic way of improving changes is through an online repository of information through the procurement and contracting community, which includes public boards. The effort is the first time a process has ever been attempted to produce a fully supported planning practice and policy, as well as resource training. The 10 areas that have been identified include:

1. Outreach
2. Business assistance

3. Internal agency culture
4. Internal processes (to remove barriers for small businesses)
5. Planning/forecasting (to allow lead time for best practices)
6. Statewide master contracts (for goods and services – to identify diverse business opportunities)
7. Provider networks and client services (to increase use of certified firms)
8. Using date (to increase supplier diversity)
9. Purchase cards (to include diverse spending data)
10. Public works best practices

The 10 Community of Practice Action Teams are subject matter experts. They identified more than 30 recommendations to the workgroup, which is comprised of the deputies and their designees for the Business Diversity Subcabinet. Following the presentation of the proposals to the workgroup, the recommendations were forwarded to the Business Diversity Subcabinet. Three meetings were held to discuss all policy-related recommendations. All recommendations were approved for posting to the Community of Practice online repository. The next step is developing policy around each recommendation and developing training for each of the recommendations to avoid releasing information to procurement professionals without having the benefit of some form of training or policy guidance. Each agency will take the models and design them around their particular business. The completion target is in conjunction with the publication of the results of the Disparity Study.

Mr. Brown reviewed progress from January 2018 to the present. Significantly more progress will be achieved with the release of the Disparity Study. Although many of the volunteer measures address many of the identified disparities in the study, a process and roadmap will help guide agencies.

Vice Chair Keith commented that most disparity studies consider the availability and barriers to competition and actual participation based on dollars spent. She asked whether the scope of the study includes pipeline disparity issues, such as challenges for small or disadvantaged businesses in competing. Mr. Brown replied that the Disparity Study does not just include quantitative data, it includes anecdotal data. Information has been submitted from the public, from stakeholders, and business owners over the course of 36 business owner meetings, six stakeholder meetings, and three informational meetings across the state. The data are extensive in terms of identifying where issues might reside within the system. Staff interviews have been conducted with all 31 state agencies and two educational universities to address pipeline issues. It is very important the study is specific to the problems that have been identified because venturing outside of that will fail to produce a narrowly-tailored program to design. To enable adherence to the AG's Opinion of following a narrowly-focused program designed to target the actual inequities where they appear within the populations, it is necessary to have empirical, quantitative, and anecdotal data.

Mr. Thompson asked about the type of business assistance the action team is working on. Mr. Brown replied that many resources are available through a one-stop shop. Ms. Young explained how ongoing efforts include identifying all sources of information for small businesses. OMWBE has partnered with Small Businesses and provides online information for small business assistance, access to capital, and apprenticeships, etc. Business Assistance is intended to create a platform to provide access online rather than face-to-face support services. However, the online site is inclusive of all OMWBE's partners.

Mr. Thompson said that as a contractor working with small businesses, access to capital is important and one of the most difficult challenges for small businesses. He encouraged more efforts to provide information on access to capital options.

Mr. Fuller commented that as a small minority contractor, his company did not receive payment for 60 days. As a third-tier subcontractor, final payment is often delayed.

Mr. Brown added that one of the reasons for emphasis on policy and training technical teams is to ensure agencies monitor and track progress on many of the policies, mission, vision, and values

Ms. Reyes remarked about her experience when constructing her business building. She encountered some financial challenges but learned that some lenders are willing to provide gap financing. She suggested adding that information to the

OMWBE website. Ms. Young affirmed the website is continuously evolving. OMWBE is seeking feedback from small businesses.

Mr. Seydel commented on the Governor's establishment of a small business workgroup. The workgroup is discussing creating a one-stop shop for businesses at the Secretary of State by providing a roadmap of services to help guide small businesses. He suggested coordinating with the workgroup. He offered to provide a contact who is a Governor's staff member who works with various liaison groups throughout the state. Mr. Brown asked to receive the information to ensure all parties are included in the efforts. One of the major charges of the Subcabinet was not to delay actions dependent upon the status of providing a one-stop shop. A one-stop portal project has been underway with many starts and stops. The reason for the assignment of OMWBE as the one-stop shop is because it exists and is a user and coordinator of all different kinds of resources with information presented in an easy and accessible format for the public.

Chair Schacht asked about discussions surrounding how current procurement laws for goods and services relate to any of the other activities engaged by the Action Teams. Mr. Brown replied that because he works at DES, the teams work with government contracting rules, as well as with the last iteration on procurement reform. That is something that will always be considered. The effort is creating model policy with the technical tools, as well as interfacing with specific public works that procure goods and services in the area of public contracting at DES. It is a seamless process as DES is chairing the effort. Chair Schacht inquired about any specific recommendations moving forward relative to alternative project delivery. Mr. Brown advised not at this time. However, the process is continuous and as new recommendations are offered and accepted, policies are developed and moved forward. Those specific recommendations would likely be forwarded to the Public Works Action Team as an item for a recommendation and policy development.

Chair Schacht pointed out the difficulty of evaluating the initiatives as they are in the infancy stage. However, what is interesting and positive is the detailed action plan, as two of the five actions for Community of Practice equates to best practices for owners, changing cultures, increasing awareness, and identifying opportunities to improve outcomes. Since it has only been a year, it is likely too early to provide feedback on whether those efforts are changing or improving outcomes. Mr. Brown added that it is important to consider that there is a period of evaluation for voluntary measures. Implementing them will be at the Subcabinet level followed by a rollout to other agencies. Small agencies encounter more difficulties because they lack the resources.

Ms. van der Lugt noted that the work over the last 18 months, particularly with agency directors of large agencies has resulted in a shift in thinking. The work of Mr. Brown and Ms. Young in helping people get into a safe space to discuss issues has involved some difficult discussions and meetings. Many people admit to a lack of knowledge and acknowledge the need to learn to direct their agencies properly.

Chair Schacht recommended maintaining a feedback loop, particularly with the Community of Practice and technical assistance pieces as they directly relate to activities of the Board and provide a broader understanding of how the Board could improve outcomes and what can lead to success. He suggested scheduling incremental updates to review progress.

Business Equity Initiatives – Information

Chair Schacht recognized Olivia Yang, Washington State University, who provided a report on some actions by public owners to increase inclusion and equity.

Ms. Yang thanked the Board for the opportunity to provide the update by telephone. She is speaking on behalf of several large institutional public owners in the state. They include the University of Washington, Port of Seattle, Sound Transit, City of Seattle, City of Richland, King County, and Washington State University. The owners have been engaged in conversations for over a year learning from each other about programs and practices to further the mutual goal of increasing inclusion of women and minority businesses. Many of the owners have been engaged in business diversity efforts for decades. However, because of the uniqueness of each agency with different missions and governing boards, the specific programs by necessity are individual although the underlying concepts, values, and practices are similar. She is encouraged that so many public owners share the same core beliefs.

Institutional public owners are construction consumers and have a stake in maintaining a qualified and competitive pool of contractors, subcontractors, architects, and engineers. The variety and the size of firms are important for owners, as well as the number of firms for more service and cost-responsive service to meet the needs of public owners. For many public owners, public employees understand stewardship responsibilities and understand there is a stake in making society better. In the case of business equity and how it relates to women, small, and minority owned businesses, the group developed a multi-prong process to create opportunities, create access to those opportunities, and most importantly, focused on developing those firms whether through coaching or other forms of assistance. The group also understands cash flow issues small businesses encounter. The group is considering ways to mitigate the barriers for small business to help them increase their competitiveness and help them be sustainable. The variety and size of firms ensures a healthy and competitive environment and would lead to prosperity that is more equitable for everyone in society. To be successful, firms must also bring value, skills, expertise, and experience that make them competitive for partnering on a project. During the conversations, the group learned that many stakeholders believe in the use of certified firms as a preferred means of equity. However, the group believes the engagement of women-owned and minority-owned businesses is too important to be left to one single tool if the ultimate goal is to create access to opportunities. As many tools as possible will be necessary to create these opportunities in the short-term and to create the environment in the long-term that will foster the competitiveness and continued viability of those firms.

The summary is a snapshot of ongoing efforts by the public owners. Actual measures implemented to date include:

1. **Outreach** – Public owners have engaged in outreach to the extent that the group has adjusted some of the mechanisms of outreach.
2. **Acknowledge both qualified and certified firms** – A qualified firm is a term that some public owners use to describe minority-owned or women-owned business that have not completed the certification process.
3. **Incentivize prime contractors to increase their utilization with proposed plans** – The group seeks prime contractors that establish the goods and goals for both certified and qualified firms by considering the demographics and tailoring the different packages. The group accesses the prime contractors in terms of the level of inclusion and tracks their goals, awards, and participation. It has become a common practice today. The group closely monitor firms to determine if they are meeting or exceeding goals
4. **Incentivize large firms to mentor small firms** – WSDOT and the Federal DOT are pioneers and leaders in this particular approach. The group believes a focus is necessary for the development of firms. The public owners also incentivize large firms to sponsor small firms through training. At the University of Washington, the Foster School of Business offers a consulting service through the Business Consulting and Business Development Center to encourage larger firms to sponsor a student.
5. **Meet with firms and provide coaching support** – normally it is in conjunction with outreach efforts. Coaching is provided on technical skills based on a case-by-case and by need. Coaching could entail follow-up with the small business that failed in a bid process.
6. **Incentivizing firms to create career paths within the firm** – in many instances, a new start-up is possible if the owner has learned the trade working for another business.
7. **Beyond individual efforts** – Several public owners have collaborated in their respective outreach programs to offer collaborative efforts.

Ms. Yang added that the measures align with the approach of creating opportunities, improving access to opportunities, and supporting the development of qualified competitive firms. She shared that the City of Pullman is the home of Washington State University within Whitman County. The county has a population of 50,000 people. In the 2012 Census, the City of Kirkland also has a population of 50,000 people. Driving from one end of Whitman County to the other end takes approximately one hour. There are days when it also takes one hour to drive from one end of Kirkland to the other end. In the state, there is a great variety of geography, climate, demographics, economy, and certainly the politics. Public owners across the state believe, with those differences aside, that the common core values and aspirations are the same and common to all by creating opportunities for making society better. She asked the Board not to forget that the laws passed by the Legislature affect the entire State of Washington and that the Board should recommend legislation that support the best instincts and highest aspirations but still ensure legislation that allows leeway for individual public owners and jurisdictions to devise nuance solutions which best meets the needs of each specific

environment. The group looks forward to continuing to engage in the conversation and collaborate with the Board on this very important issue.

Chair Schacht reported on several conversations between him, Vice Chair Keith, and Ms. van der Lugt to establish a CPARB committee focused on equity and inclusion and identifying ways to improve outcomes. Potential changes to legislation will be considered by the Board later in the meeting concerning specific recommendation to modify existing statute for creating more opportunities for participation and equity. However, jumping into the details without deliberating the issues, engaging with stakeholders, or comprehensively considering ways to improve outcomes is not a course to follow.

Ms. van der Lugt said the conversation centered on ways to increase outreach and establishing a committee to help frame the Board's focus and approach for small businesses, minority, and women-owned businesses. That could include a discussion on the work the Board could be accomplishing to achieve robust, meaningful, and long-term results. The Board's outreach to stakeholders should be outside of Olympia and reach beyond King County.

Mr. Hernandez said the minutes of the last meeting referred to the notion that public owners in eastern Washington have a difficult time meeting inclusion goals or establishing inclusion goals. He asked Ms. Yang about her experience with meeting and setting goals. Ms. Yang replied that the utilization of women and minority-owned businesses in eastern Washington is different than it is in western Washington. WSU has been fortunate to attract a fair number of western Washington firms for larger projects. She cited a number of large western Washington general contractors. For small and medium-size projects, WSU tends to attract local and eastern-based firms in Idaho as Pullman is close to the Idaho border. She cited the categories of different small firms in the category of veteran-owned and Native American firms located in areas near the borders. WSU also has a campus in Vancouver, Washington, which is also a border city. However, Eastern Washington University in Cheney has experienced similar issues, which has created some difficulties. During a meeting with the City of Spokane and other public entities in Spokane, information was shared surrounding the frustration, as federal funds for many of the public projects require certified firms. Public entities are experiencing difficulty in locating certified firms to complete the work. Some firms end up overbooked creating other problems and often resulting in the public entity performing the work. It has become a real problem for public owners, which speaks to the sensitivity of laws that have been adopted.

Mr. Lemos commented on several points addressed during Ms. Yang's presentation. He asked whether the agencies are planning or intend to incentivize prime contractors to use women, minority, and small businesses. Ms. Yang responded that nearly all the agencies in the group are trying to make that a priority, and so yes, the public owners are incentivizing that practice. Mr. Lemos replied that the information is very concerning because there is no public agency or entity in Washington that does not receive federal dollars. Federal law precludes any recipient of federal money to have a program that incentivizes prime contractors to do business with that category of businesses. It is against the law. He encouraged Ms. Yang to consult with someone familiar with civil rights law. The AG hired a civil rights expert and he believes her name is Dawn. The concerning aspect of that practice is the possibility of large agencies being sued. An illegal program could kill all (equity) efforts, even those that are unrelated. He cited a paving company that sued Washington State Department of Transportation (WSDOT) in 2006. WSDOT was found noncompliant because they were not following federal regulation when it came to capacity, which addresses the concern of regional access to those businesses. When establishing goals, agencies are required to consider how many firms are available to fulfill the goal. That often results in a lower goal. It is a misconception that it is not possible because there are no firms. His biggest issue for advocating for the disparity study is the lack of understanding of civil rights. Too many AGs in the state do not understand civil rights. He recommended against pursuing actions approved by an AG as the owner is exposing itself to the liability of I-200. He welcomed the opportunity to discuss the issue with Ms. Yang and to provide additional information surrounding his concerns for incentivizing. Incentivizing could include affording additional points beyond the bid price or providing cash through awards or plaques. Should there be a fiduciary incentive, it is against federal law. Another concern is the desire to be expansive, which could include the LGBTQ community. Advocating for inclusiveness and diversity by adding LGBTQ in the same category as minorities could open opportunities to white men who are LGBTQ, which defeats the purpose of inclusiveness. His concern surrounds the collection of data by public agencies under the guise of inclusiveness as it could include businesses that are not certified. He encouraged the building of capacity and awarding work to

medium and large minorities, but in addressing disparity it speaks to firms that are certified or there is data and proof that they are within the size limit for the requirements of the program. It is important to collect and separate those companies.

Ms. van der Lugt noted the attorney referenced by Mr. Lemos is Dawn Cortez.

Ms. Yang expressed appreciation for the comments but does not believe time is warranted now to continue debating the issue. It does however, point to how complex the issues are and how nuanced the solutions need to be.

Chair Schacht asked the Board to consider pursuing an exploratory committee similar to Board Development and the Education Committees for the purpose of establishing a committee in February focused on the issues of equity and inclusion and engaging in a broad and comprehensive discussion about what is or is not possible. One new legislative proposal has been offered by the JOC Evaluation Committee, as well as a proposal to modify an existing CPARB-approved legislation for DB. Both measures include language that speak to certified businesses and bonding capacity. Language in both measures is different, which speaks to a lack of opportunity for the Board to receive broad stakeholder input. The Board's track record for the successful DB Best Practices entailed an extensive two-year effort with many stakeholders. The Board might want to consider a similar comprehensive and disciplined process that would modify the statute to increase the way in which alternative project delivery is tied to business opportunities as part of reauthorization so that it extends through the statute for the three methods of alternative procurement that are under the oversight of the Board.

Mr. Thompson recommended facilitation of a process rather than forming a committee because of the many moving parts. Additionally, hovering above the efforts is the Governor's Initiative involving OMWBE and stakeholders. To be effective, all stakeholder groups need to be involved and it should be facilitated.

Mr. Frare volunteered to lead an informal workgroup. He invited Ms. van der Lugt to participate in the workgroup to complete an outline for the goals of the committee. Ms. van der Lugt agreed to participate and conveyed her hope to receive input from the Board and others.

Chair Schacht referred to the protocol followed during the October meeting to afford flexibility. He acknowledged the importance of reaching out to all stakeholders with a goal to approve the formation of a committee with a mission and goals during the February 2019 meeting.

Mr. Maruska supported the recommendation and recommended the efforts of the committee should be all-inclusive.

Vice Chair Keith recommended the workgroup should explore whether to establish a separate committee or whether the work becomes an additional component layered into existing work.

Chair Schacht suggested the group's initial efforts should identify the intended outcomes and identify a process to achieve those outcomes.

Data Collection Implementation Committee – Discussion/Action

The Board discussed deferring the discussion to the next meeting if no action is requested. After further discussion, the Board agreed to receive an update.

Mr. Thompson reported that at the last meeting, the committee requested approval of adding another question to the PRC application to enable submission of information from public owners when requesting certification or recertification.

Mr. Thompson referred to the 2013 JLARC recommendation for the Board to reconsider its approach to the collection of project information and include GC/CM subcontractor information. CPARB should provide guidance and instructions to public bodies on how to best report that information. At the last committee meeting, members engaged in a practical analysis and identified approximately six public bodies that are scheduled for recertification in 2019. During the course of

recertification, firms would be required to respond to a question that would be added to the current nine questions within the application. The question would be similar to the following:

“Responding to the 2013 JLARC Recommendations is a priority and focus of CPARB. Please provide GC/CM project information on subcontract awards and payment, and if completed, a final project report. As prepared for each GC/CM project, please provide documentation supporting compliance with the limitations on the GC/CM self-performed work. This information may include, but is not limited to: a construction management and contracting plan, final subcontracting plan and/or a final TCC/MACC summary with subcontract awards, or similar.”

The intent is when entities submit an application and provide documentation that speak to compliance, the Board could share that information with other public bodies moving forward.

A second recommendation by the committee is to appoint new committee members Brian Barson, Janice Zahn, Howard Hillinger, and substitute Jolene Skinner (L&I) to enable Mr. Kuruvilla to withdraw from consideration.

Rebecca Keith moved, seconded by Brent LeVander, to approve both recommendations from the Data Collection Implementation Committee as stated. Motion carried unanimously.

JOC Evaluation Committee – Discussion/Action

Tae-Hee Han, Chair, JOC Evaluation Committee, reported on the status of efforts for a legislative proposal to RCW 39.10.420-450 Job Order procedure – Which public bodies may use – Authorized use. All changes proposed last year remain intact. The last change pertained to discussions with Mark Riker and Neil Hartman representing Labor and Building Trades. The change would implement the apprenticeship program at the local level based on the language of existing RCWs. The committee approved the proposed changes during its meeting on December 3, 2018. Mr. Riker and Mr. Hartman assisted in the development of the proposed language.

Mr. Riker thanked the committee for working with him and Mr. Hartman on the proposal. As presented, he is prepared to vote in favor of adopting the proposal as CPARB legislation.

Ms. Deakins clarified the proposal for consideration is a revision to the handout previously posted on the website and the copy provided to the Board. Mr. Han acknowledged that a recent change was made to section 7 within 39.10.450 clarifying language to reflect, “...shall utilize a state registered apprenticeship program...”

Vice Chair Keith clarified that the committee voted on December 3, 2018 to adopt the proposal that was included as a pre-read and not the proposal as presented.

Mr. Han explained that the reason for the change and acceptance of Mr. Riker’s version was to clarify the intent.

Mr. Crawford commented on the ability of the committee and labor interests to work out their differences to produce acceptable legislation.

Mr. Maruska thanked Labor for spending the time to work with the committee.

Bob Maruska moved, seconded by Bill Frare, to accept the recommendation from the JOC Evaluation Committee, and move it forward as CPARB legislation. Motion carried unanimously.

PROPOSED CHANGES TO DESIGN-BUILD STATUTE REVISIONS – Discussion

Chair Schacht reported the request is two proposals to modify provisions in the DB statute approved by the Board in October. He asked proposers to briefly describe their respective proposal.

Dan Seydel, Entrepreneurial Institute of Washington, reported over a year ago, some recommendations were presented for changes to alternative public works, which included DB, JOC, and GC/CM. Discussions with the JOC Evaluation Committee resulted in a presentation to the Board. Since then, some language has been drafted for DB. Since the discussion, input has been offered by the community. He invited comments on the proposed amendments.

Frank Lemos complimented Mr. Seydel for his efforts. He was asked to review the proposal by Mr. Seydel. He sent an email to the Board on November 29, 2018. Mr. Lemos said he is also representing Bob Armstead and his interests in the Washington State Civil Rights Coalition and well as MBAC. Essentially, his email explains why it is so important to the community to take this opportunity to consider what will be presented to the House and Senate as recommendations by CPARB. He has spoken with several Board members. One of the concerns is the language surrounding bonding and requiring a prime or firm to extend coverage to subcontractors. Essentially, the proposal would not succeed and likely would not be referred to a committee. During his discussions with Mr. Seydel, Mr. Seydel agreed with his recommendation on the bonding to revise the proposal to reflect a suggestion to maximize their support. He encouraged the Board to support the proposal language. Additionally, an agency shared some concern that the language may force smaller public entities that use alternative works to be subject to state statutes when those entities are currently not subject to those statutes. He is supportive of language that would help clarify the issue. He asked Mr. Frare to speak to the concern about legality of the proposed language and the compromise.

Mr. Frare advised that in the event the proposer's past performance is used as criteria for selection, it could presuppose the work of the Business Diversity Subcabinet, which should be avoided as to infer having statistical evidence of a disparity. The proposal is to move the language from the selection criteria and insert the language within the contract language (page 11 of the draft) to create subsection 8 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 Owned Business Enterprise certified and veteran-certified firms.*" The intent is to be open and transparent about the utilization under current conditions across the DB contracting methodology.

Mr. Maruska recommended including "qualified" firms to avoid limiting only to certified firms. The data could be recorded separately, but including qualified firms ensures all information is captured.

Mr. Frare supported the suggestion. Additionally, within the JOC proposed legislation as approved, some language speaks to, "*the extent allowed by law, past performance on approved contractor inclusion plans is acceptable.*" The provision, "*as allowed by law*" serves as a qualifier. He and Mr. Lemos reviewed the proposal yesterday and neither would want the language to open the door as a way to disqualify the language. The intent is to speak to public bodies that have statistical evidence of disparity or that they have completed a disparity study because it would enable the owner to move forward with a more rigorous selection process. It is important to include that language within the evaluation factors stating, "*The proposers past performance and utilization of Office of Minority and Women Owned Business Enterprise certified businesses as allowed by law.*" The proposal is consistent with the efforts by the Business Diversity Subcabinet and with JOC. Those are the two proposed changes.

Mr. Lemos said the proposal supports data from both qualified and certified businesses but the intent is not combining the two entities. The request is for data that has been requested for the last five years. He credited Mr. Seydel for his efforts.

Mr. Hernandez requested clarification as to whether Mr. Seydel's constituents support the proposal as the proposal was not included in the pre-read proposal.

Mr. Seydel asked for clarification from Mr. Frare regarding the removal and reinsertion of the evaluation criteria. Mr. Frare responded that past performance could be revised to reflect, "*as allowed by law*" and apply when not in conflict with the Disparity Study and the long-term goals of the Business Diversity Subcabinet. Data collection would move to a separate section, as well as requiring the contract to include language requiring the contractor to report data. Mr. Seydel cited the term "*may*" as it was used specifically to be permissive for the agencies. The term, "*socially and economically disadvantaged*" was included to satisfy the concerns as it related to I-200. Now, the proposal is to change it to "*shall*." He asked whether the prior language with the substitution of "*shall*" would still raise legal concerns. Mr. Frare said that

if the language includes “shall” only, the issue is those agencies that do not have a disparity study would be unable to use DB without suffering the risk of derailing the long-term plans for the Disparity Study and the Subcabinet and ultimate business goals. Mr. Seydel said the explanation satisfies his questions. Additionally, he prefers not using “qualified” because it has many different meanings to many people. If the word was not included in the RCW definitions, it does not exist. He encouraged removal of “qualified” but would defer to the preferences of the community.

Mr. Lemos offered that including disadvantaged inclusion information was previously included in section A that has since been revised to reflect, “shall.” The addition of “as allowed by law” is the only way to revise the language of “shall” because it cannot be interpreted that the Board is judging applicants, agencies, or prime contractors based on inclusion numbers because that would be unlawful. He supports the proposal.

Mr. McCormick questioned the status for including “qualified.” Mr. Lemos said his proposal would not eliminate “qualified.” Chair Schacht added that the statute also does not prohibit the collection of certain information.

Vice Chair Keith said she is interested in Mr. Lemos and Mr. Seydel’s perspectives regarding the proposal. During the DB Statute Review Committee meetings, there was much conversation surrounding opening the statute to smaller DB projects to eliminate limitations. Much of the discussion centered on ensuring a competitive environment and that new firms could participate in the procurement method. For smaller projects, teaming arrangements often occur. She asked how evaluating past performance would impact new businesses trying to enter the field.

Mr. Seydel responded that when the original language was developed, many smaller firms were not competing for DB projects. The goal was affording an opportunity for small firms to participate. The existing statute and environment did not include many small firms participating at today’s level. Naturally, to gain capacity, teaming is a highly beneficial area for offering a way for firms to participate. However, a firm’s participation based on its background and experience represents a great opportunity as it relates to its approach to inclusivity. It is up to the agency to define what it evaluates as an effort to include participation by small diverse firms. If it is a new business, there could be other parameters an agency might deem as relevant.

Mr. Lemos asked Ms. Keith to repeat the main concern. Ms. Keith said the committee conversed about ensuring the focus was not on experience only. The committee has discussed evaluation criteria being based on experience only because of the desire for proposals to stand on their own merit and to avoid selection of only those firms that had previously completed many projects because of teaming limiting the opportunity for new firms to enter the field. She would like to understand how past performance in this area would be measured.

Chair Schacht shared an alternate perspective. The challenge of past performance is the requirement for the firm to have completed similar work before it is possible to demonstrate inclusion. Ms. Yang has indicated that it could disadvantage a small business from pursuing a DB contract in eastern Washington where the firm has not had opportunities whereas a contractor from western Washington has many projects completed. His perspective as a small business owner is to evaluate the inclusion plan rather than prior history. If a small firm with no history but is highly qualified produces an inclusion plan that demonstrates it would generate better results than another company with prior history, then that would be the company he would select. An inclusion plan would be more important to him and likely to many other stakeholders rather than prior performance as there is no guarantee the same performance would occur in the future.

Mr. Lemos referred to the AGO’s Opinion and the legal concern. The statute does not require evaluation to be based on performance. An agency can be certified with zero inclusion because it is not measurable. He questioned why the community is seeking to include it as it only represents “baby steps.” What is required is data. The request is for data and there is no expectation that inclusion of performance would change overnight. The intent is to secure the data and it should be data on certified firms.

Chair Schacht asked, based on his understanding of the goal, whether there would be a problem within the evaluation factors to ask for the inclusion plan and how the firm plans to achieve the goal given the fact that firms are subsequently required to submit data to the public owner, which could then be measured relative to the goals. It appears the data

element is covered in section 8. However, he questioned whether an evaluation would be an advantage to promote inclusion by asking the firm what it intends to do on a specific project.

Mr. Seydel responded that there are two approaches with the first as the approach and the second as the past performance. Chair Schacht said the collection of data would occur under section 8. He questioned whether it would be preferable to ask the company how it plans to approach the situation, as it would align with the specific sub-geography, project type, owner, and available resources.

Jolene Skinner said she works with owners and with contractors on collecting data. Providing data is a big issue because it is time-consuming and a resource issue for many, which is why the Department of Labor and Industries (L&I) is working with OMWBE to secure its data to provide information on utilization and those reports within the contractor portal and the interagency portal used today for public works projects. By June 2019, that information would be included within the Department's system, which would cover the data portion for certified firms for minority, women, and disadvantaged businesses. At this time, the only data lacking are veteran certified firms. The language within the proposal could be revised to speak to the utilization of L&I's system similar to the apprenticeship utilization bill passed during the last session. Language in that statute spoke to L&I's systems used to manage the apprenticeship utilization. A mandate will be effective January 1, 2020. However, a fiscal note might be necessary to complete the work.

Mr. Hernandez remarked that he might be misunderstanding the new version of the proposal as he believes it would be stronger to include some kind of inclusion requirement within the two paragraphs in D1 and D2 by not only requiring the past performance information but to also ensure the firm would be evaluated on its current inclusion plan for the project. A submittal by Mr. Lemos for RCW 39.10.320 states that a public body utilizing the DB contractor shall provide, "*(f) contract documents that require the contractor, subcontractors, and designees to submit inclusion plans for use of office of minority and women's business enterprises-certified minority, women, veteran, and small business as subcontractors and suppliers.*" That language adds some teeth; however, it would be preferable if something similar could also be included in RCW 39.10.330.

Mr. Seydel said that currently, agencies evaluate contracts based on experience. The proposal is essentially the same thing with the addition of "inclusion" because in this case it has a particular impact. That is the basis for the proposal.

Chair Schacht commented that too many points on past utilization would create obstacles to new firms with less history but with an innovative approach and commitment.

Mr. Seydel said it speaks to how it occurs within the industry because the first GC/CM project was only completed in 1993. At that time, no company had any experience with GC/CM requiring some starting point. Since 1993, the state has not done a good job of inclusion. The goal today is to create some practices that are embedded into the fabric of CPARB. It is important to develop some parity and uniformity as the rules apply statewide.

Mr. McCormick said the proposal as presented is that the requirement is included within the RFQ stage. There was debate during the Design-Build Best Practices Committee meetings as to the timing for various requirements. The proposal appears to request the information during the RFQ in terms of previous record while in the RFP, the inclusion plan would be required. It would not be fair to ask for plans in the RFQ phase because of the volume of work required. The requests should be asked of the finalists.

Ms. van der Lugt requested clarification of Mr. Frare's proposal. It was clarified that "*shall*" would be included with the addition of "*to the extent allowed by law.*"

Dawn Cortez reported she represents DES, CPARB, and the Business Diversity Subcabinet and invited anyone with questions to contact her.

Chair Schacht noted that the Board has made some progress on the proposed language; however, the proposal was not published as a pre-read and not everyone has had an opportunity to review the proposal. Additionally, the proposal to add

language as discussed could result in other provisions with the same language stricken as well. Ms. Cortez clarified that the provision should have been stricken.

Mr. Lemos noted that the recommended language he submitted is the correct version as it includes deletion of that provision as cited by the Chair. Other interest groups have indicated a desire not to eliminate the bonding requirements but instead refer to the JOC statute that speaks to the prime maximizing support to subcontractors. Mr. LeVander is aware of the proposed language in the JOC statute. The second edit to his proposal is the proposal introduced by Mr. Frare and pertains only to one line. The information was submitted late because the community continues to work with agencies and contractors and it would be a mistake for the Board not to act.

Chair Schacht expressed concerns about asking the Board to vote on a proposal that has not been reviewed. Alternatively, a poll of the Board would likely result in broad support for the intent of the proposal. He questioned whether a mechanism is available to the chair that enables a straw poll of the Board to gauge support for a continuing discussion to determine how to align the language with the intent. He outlined some options for consideration and asked for input. He plans to seek sponsors for the legislative proposals and finalizing the language is of the utmost importance to meet the legislative deadline.

Mr. Maruska shared that as a former chair, he encountered similar situations where timing was in conflict. Several previous approaches included action by the Board with direction to the chair to continue to refine the language without changing the intent approved by the Board. Another alternative is a motion to approve the language as discussed with a proviso for members to submit any concerns to the website for the Board to review.

Mr. Frare added that previously, the Board approved some changes in language with the understanding that additional changes to include the intent would be submitted. The Board endorsed the proposal with recognition that some modifications would occur.

Mr. Hernandez offered that the matter is not that complex.

Joaquin Hernandez moved to accept the language proposed by Mr. Frare to insert Section 8, which deletes the payment bond language. The motion died due to the lack of a second.

The Board discussed the correct version of the proposal.

Chair Schacht invited comments on the proposed language on the bond.

Bill Kent, Mortenson Construction, commented on the proposal to add bonding language from the JOC proposal to the DB statute, as JOC projects are smaller in value and bonding requirements are very different. Ramifications would occur when attempting to dictate business activity. A bond is not an insurance policy. It is a credit instrument based on the company's history and financial stability. A bond does not apply to another company working under the contractor, it only applies between the contractor and the owner. Legislating the use of the bond for a subcontractor is not how bonds are applied. Although he understands the intent to help firms, the bonding company serves as a safeguard for the owner. The industry has a standard that if a bond can be secured, the company is capable of doing the job. If not possible to secure a bond, it is a red flag. The most important aspect of any participation plan is that the people involved are successful. The bonding issue is a self-limiter and helps companies stay within their boundaries to ensure owners are successful. Bonds are a safeguard for the industry.

Mr. Frare said his experience has been in the public sector. He contracts with the prime contractor, who supplies a bond. He knows what the relationship is with the prime contractor. He asked for a description of the relationship between a prime contractor and subcontractors and the bonds subcontractors provide to the prime contractor. Mr. Kent advised that it is nearly an identical relationship.

Mr. Thompson said it is a business decision. Most contractors require subcontractors to be bonded.

Mr. Kent said the alternative is using subcontractor default insurance, which requires the subcontractor to complete an evaluation to include a financial evaluation to ensure they meet the parameters that would result in a successful venture for the project.

Mr. Riker asked the Chair to consider scheduling a telephone meeting to finalize the changes. Vice Chair Keith supported the suggestion.

Bill Frare moved to direct the Chair and staff to include the changes as discussed within a draft document, disseminate the draft to the Board, and schedule a special meeting to consider the bill after all members have had an opportunity to review the changes. Steve Crawford seconded the motion.

Mr. Lemos pointed out that on November 29, 2018, the original language was recommended by the community, which is why he asked Mr. Frare to review the edits to the one section. The discussion has evolved to other changes. He agreed the Board should discuss the bonding issue, but would not want the Board to defer consideration of the draft distributed on November 29, 2018.

Chair Schacht commented on the short timeline and the multiple stakeholders who are nearing agreement on the benefit of statute revisions. He recommended the Board could agree on the general principles in the language introduced by Mr. Frare relative to changing “*may*” to “*shall*” for the utilization plan and requiring public owners to provide data. He is unclear as to the status of language pertaining to bonding, which could jeopardize the entire proposed package of changes. He has spoken with other general contractors and has received similar input. They have indicated that for business purposes, they must know that the subcontractors are qualified to perform the work and they are unwilling to assume fiduciary responsibility for subcontractors. Whether it is a self-insured program or a bond, all subcontractors complete the same vetting. His concern is for small contractors that may be at risk.

Mr. Seydel and Mr. Lemos agreed to revisit bonding during the next legislative session.

Chair Schacht asked the Board to authorize the Chair and the Vice Chair to work with staff to incorporate the language into a clean draft and allow moving forward to intersect with minority and the business community to seek support of the proposed legislation.

Bill Frare and Steve Crawford withdrew the motion.

Mike McCormick moved, seconded by Brent LeVander, to authorize the Chair and Vice Chair the latitude to firm up the language excluding any language with respect to bonding. Motion carried unanimously.

Bill Frare moved, seconded by Greg Fuller, to endorse the proposed legislation to enable the Chair to move forward with advocacy. Motion carried. Andy Thompson abstained.

ADJOURNMENT – Action

Bill Frare moved, seconded by Chair Schacht, to adjourn the meeting at 1:00 p.m. Motion carried unanimously.

STAFF & GUESTS

Bob Armstead, WA State Civil Rights Coalition
Talia Baker, Department of Enterprise Services
Paul Berendt, Strategies360
Rex Brown, Department of Enterprise Services
Dawn Cortez, Office of Attorney General
Nancy Deakins, Department of Enterprise Services
Valerie Gow, Puget Sound Meeting Services
Tae-Hee Han, Sound Transit

Frank Lemos, National Minority Business Advisory Council
Mynor Lopez, OMWBE
Art McCluskey, WA State Department of Transportation
Shari Purves-Reiter, Department of Labor & Industries
Jolene Skinner, Department of Labor & Industries
Dan Seydel, Entrepreneurial Institute of Washington
Melissa Van Gorkom, WA State Legislature - SCS
Charles Wilson, Department of Enterprise Services

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Janet Jansen, Department of Enterprise Services
Bill Kent, Mortenson Construction
Cassie Langton, Department of Labor & Industries

Oliva Yang, Washington State University (Telecon)
Elisa Young, OMWBW
Janice Zahn, Port of Seattle/PRC

Prepared by Puget Sound Meeting Services, psmsoly@earthlink.net